

VETERINARY MEDICINE BOARD [811]

Rules renumbered and transferred from agency number[842] to [811] to conform with the reorganization numbering scheme in general.

CHAPTER 1

DESCRIPTION OF ORGANIZATION

- 1.1(17A,169) Organization and duties
- 1.2(17A,169) Headquarters of the board
- 1.3(17A,169) Meetings

CHAPTER 2

PETITIONS FOR RULE MAKING

(Uniform Rules)

- 2.1(17A) Petition for rule making
- 2.3(17A) Inquiries
- 2.5(17A) Petitions received by department

CHAPTER 3

DECLARATORY ORDERS

(Uniform Rules)

- 3.1(17A,169,272C) Petition for declaratory order
- 3.2(17A,169,272C) Notice of petition
- 3.3(17A,169,272C) Intervention
- 3.4(17A,169,272C) Briefs
- 3.5(17A,169,272C) Inquiries
- 3.6(17A,169,272C) Service and filing of petitions and other papers
- 3.7(17A,169,272C) Consideration
- 3.8(17A,169,272C) Action on petition
- 3.9(17A,169,272C) Refusal to issue order
- 3.12(17A,169,272C) Effect of a declaratory order

CHAPTER 4

AGENCY PROCEDURE FOR RULE MAKING

(Uniform Rules)

- 4.1(17A,169,272C) Applicability
- 4.3(17A,169,272C) Public rule-making docket
- 4.4(17A,169,272C) Notice of proposed rule making
- 4.5(17A,169,272C) Public participation
- 4.6(17A,169,272C) Regulatory analysis
- 4.10(17A,169,272C) Exemptions from public rule-making procedures
- 4.11(17A,169,272C) Concise statement of reasons
- 4.13(17A,169,272C) Agency rule-making record

CHAPTER 5

PUBLIC RECORDS AND FAIR INFORMATION PRACTICES

(Uniform Rules)

- 5.1(17A,22) Definitions
- 5.3(17A,22) Requests for access to records
- 5.6(17A,22) Procedure by which additions, dissents, or objections may be entered into certain records
- 5.9(17A,22) Disclosures without the consent of the subject
- 5.10(17A,22) Routine use
- 5.11(17A,22) Consensual disclosure of confidential records
- 5.12(17A,22) Release to subject

- 5.13(17A,22) Availability of records
- 5.14(17A,22) Personally identifiable information
- 5.15(17A,22) Other groups of records
- 5.16(17A,22) Data processing systems
- 5.17(169,252J) Release of confidential licensing information for child support recovery purposes
- 5.18(17A,22,169,261) Release of information to the college student aid commission

CHAPTER 6 APPLICATION FOR LICENSURE

- 6.1(169) Procedure
- 6.2(169) Fee schedule
- 6.3(169) Reinstatement fee
- 6.4(169) Graduates of foreign schools
- 6.5(169) License by endorsement
- 6.6(169) Issuance of limited license; specialization
- 6.7(169) License renewal
- 6.8(169,261) Issuance or renewal of a license to practice veterinary medicine—denial

CHAPTER 7 EXAMINATIONS

- 7.1(169) Examination procedure
- 7.2(169) Conduct

CHAPTER 8 AUXILIARY PERSONNEL

- 8.1(169,17A) Definitions
- 8.2(169) Registration of veterinary technicians
- 8.3(169) Examination
- 8.4 Reserved
- 8.5(169) Supervision
- 8.6(169) Revocation or suspension of veterinary technician's certificate
- 8.7(169) Action against veterinarians
- 8.8(169,272C) Disciplinary procedure
- 8.9(169,272C) Certification by endorsement
- 8.10(169,272C) Continuing education

CHAPTER 9 TEMPORARY PERMITS

- 9.1(169) Eligibility
- 9.2(169) Application
- 9.3(169) Supervision
- 9.4(169) Practice without benefit of temporary permit or full Iowa license

CHAPTER 10 DISCIPLINE

- 10.1(17A,169,272C) Board authority
- 10.2(17A,169,272C) Complaints and investigations
- 10.3(17A,169,272C) Investigatory subpoena powers
- 10.4(17A,169,272C) Board action
- 10.5(17A,169,272C) Peer review committee
- 10.6(17A,169,272C) Grounds for discipline
- 10.7(17A,169,272C) Sanctions
- 10.8(17A,169,272C) Panel of specialists

10.9(17A,169,272C)	Informal settlement
10.10(17A,169,272C)	Voluntary surrender
10.11(17A,169,272C)	Application for reinstatement
10.12	Reserved
10.13(17A,169,272C)	Contested case proceedings
10.14(17A)	Definitions
10.15(17A)	Time requirements
10.16(17A)	Notice of hearing
10.17(17A)	Presiding officer
10.18(17A)	Waiver of procedures
10.19(17A)	Telephone proceedings
10.20(17A)	Disqualification
10.21(17A)	Consolidation—severance
10.22(17A)	Pleadings
10.23(17A)	Service and filing of pleadings and other papers
10.24(17A)	Discovery
10.25(17A)	Subpoenas
10.26(17A)	Motions
10.27(17A)	Prehearing conference
10.28(17A)	Continuances
10.29(17A)	Hearing procedures
10.30(17A)	Evidence
10.31(17A)	Default
10.32(17A)	Ex parte communication
10.33(17A)	Recording costs
10.34(17A)	Final decision
10.35(17A)	Appeals
10.36(17A)	Applications for rehearing
10.37(17A)	No factual dispute contested cases
10.38(17A)	Emergency adjudicative proceedings

CHAPTER 11
CONTINUING EDUCATION

11.1(169)	Continuing education required
11.2(169)	Exemptions for inactive practitioners
11.3(169)	Reinstatement

CHAPTER 12
STANDARDS OF PRACTICE

12.1(169)	Prescription drugs and restricted immunization products
12.2(169)	Extra label use of veterinary drugs and immunization products

CHAPTER 13
CHILD SUPPORT COLLECTION PROCEDURES

13.1(169,252J)	Licensing actions
13.2(169,252J)	Child support collection procedures

CHAPTER 14
WAIVER OR VARIANCE OF RULES

14.1(17A,169)	Definition
14.2(17A,169)	Scope of chapter
14.3(17A,169)	Applicability
14.4(17A,169)	Criteria for waiver or variance

14.5(17A,169)	Filing of petition
14.6(17A,169)	Content of petition
14.7(17A,169)	Additional information
14.8(17A,169)	Notice
14.9(17A,169)	Hearing procedures
14.10(17A,169)	Ruling
14.11(17A,169)	Public availability
14.12(17A,169)	Summary reports
14.13(17A,169)	Cancellation of a waiver
14.14(17A,169)	Violations
14.15(17A,169)	Defense
14.16(17A,169)	Judicial review

CHAPTER 1
DESCRIPTION OF ORGANIZATION
[Prior to 2/8/89, Veterinary Medicine, Board of[842] Ch 1]

811—1.1(17A,169) Organization and duties. The board of veterinary medicine shall consist of five members, three of whom shall be licensed veterinarians and two of whom shall not be licensed veterinarians and who shall represent the general public. The state veterinarian shall serve as secretary. The board shall administer examinations to applicants for license to practice veterinary medicine and shall investigate and discipline, as necessary, persons licensed to practice veterinary medicine.

811—1.2(17A,169) Headquarters of the board. The official mailing address of the board shall be: State Veterinarian, Secretary of the Board of Veterinary Medicine, Iowa Department of Agriculture and Land Stewardship, Wallace State Office Building, Des Moines, Iowa 50319.

811—1.3(17A,169) Meetings. The board shall meet once a year at its headquarters and shall hold additional meetings as necessary for the purpose of administering examinations and conducting its duties. The organizational meeting shall be the first board meeting of the fiscal year. The fiscal year begins July 1. Three members shall constitute a quorum authorized to act in the name of the board.

These rules are intended to implement Iowa Code section 17A.3 and chapter 169.

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CHAPTER 2
PETITIONS FOR RULE MAKING
[Prior to 2/8/89, Veterinary Medicine, Board of[842] 1.4]

Insert the petition for rule making segment of the Uniform Administrative Rules which is printed in the first volume of the Iowa Administrative Code with the addition of a new rule 811—2.5(17A) and the following amendments:

811—2.1(17A) Petition for rule making. In lieu of the words “agency, at (designate office)” insert “Board of Veterinary Medicine at the Iowa Department of Agriculture and Land Stewardship, State Veterinarian, Wallace State Office Building, Des Moines, Iowa 50319”. In lieu of the words “(AGENCY NAME)”, the heading on the petition should read:

BEFORE THE
BOARD OF VETERINARY MEDICINE

811—2.3(17A) Inquiries. Substitute the following information for the parenthetical statement at the end: “the State Veterinarian, Iowa Department of Agriculture and Land Stewardship, Wallace State Office Building, Des Moines, Iowa 50319”.

811—2.5(17A) Petitions received by department. If, pursuant to rule 21—3.5(17A), the secretary of agriculture receives and forwards a petition for rule making which is not within the rule-making power of the secretary but which is within the rule-making power of the board, the petition will be accepted for action by the board.

These rules are intended to implement Iowa Code chapter 17A.

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CHAPTER 3
DECLARATORY ORDERS

[Prior to 2/8/89, Veterinary Medicine, Board of[842] 1.5]

The veterinary medicine board hereby adopts the declaratory orders segment of the Uniform Rules on Agency Procedure printed in the first volume of the Iowa Administrative Code with the following amendments:

811—3.1(17A,169,272C) Petition for declaratory order. In lieu of the words “(designate agency)” the first time the words are used, insert “board of veterinary medicine (hereinafter referred to as “the board”)”. In lieu of the words “(designate agency)” the subsequent times the words are used, insert “board”. In lieu of the words “(designate office)”, insert “State Veterinarian’s Office, Wallace State Office Building, East Ninth and Grand, Des Moines, Iowa 50319.” In lieu of the words “(AGENCY NAME)”, insert “BOARD OF VETERINARY MEDICINE”.

811—3.2(17A,169,272C) Notice of petition. In lieu of the words and numbers “_____ days (15 or less)”, insert “15 days”. In lieu of the words “(designate agency)”, insert “board”.

811—3.3(17A,169,272C) Intervention.

3.3(1) In lieu of the words “_____ days”, insert “20 days”.

3.3(2) In lieu of the words “(designate agency)”, insert “the board”.

3.3(3) In lieu of the words “(designate office)”, insert “the state veterinarian’s office at the department of agriculture and land stewardship in the Wallace State Office Building”. In lieu of the words “(designate agency)”, insert “board”. In lieu of the words “(AGENCY NAME)”, insert “BOARD OF VETERINARY MEDICINE”.

Delete paragraph 6 and insert in lieu thereof the following:

“6. A statement that the intervenor consents to be bound by the determination of the matters presented in the declaratory order proceeding.”

811—3.4(17A,169,272C) Briefs. In lieu of the words “(designate agency)”, insert “board”.

811—3.5(17A,169,272C) Inquiries. In lieu of the words “(designate official by full title and address)”, insert “the State Veterinarian, Department of Agriculture and Land Stewardship, Wallace State Office Building, East Ninth and Grand, Des Moines, Iowa 50319”.

811—3.6(17A,169,272C) Service and filing of petitions and other papers.

3.6(2) In lieu of the words “(specify office and address)”, insert “the State Veterinarian, Department of Agriculture and Land Stewardship, Wallace State Office Building, East Ninth and Grand, Des Moines, Iowa 50319”. In lieu of the words “(agency name)”, insert “board”.

3.6(3) In lieu of the words “(uniform rule on contested cases X.12(17A))”, insert “rule 10.23(17A,169,272C)”.

811—3.7(17A,169,272C) Consideration. In lieu of the words “(designate agency)”, insert “board”.

811—3.8(17A,169,272C) Action on petition.

3.8(1) In lieu of the words “(designate agency head)”, insert “the chairperson of the board”.

3.8(2) In lieu of the words “(contested case uniform rule X.2(17A))”, insert “rule 10.14(17A,169,272C)”.

811—3.9(17A,169,272C) Refusal to issue order.

3.9(1) In lieu of the words “(designate agency)”, insert “board”.

811—3.12(17A,169,272C) Effect of a declaratory order. In lieu of the words “(designate agency)”, insert “board”. Delete the words “(who consent to be bound)”.

These rules are intended to implement Iowa Code chapter 17A as amended by 1998 Iowa Acts, chapter 1202.

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[Filed 4/30/99, Notice 3/24/99—published 5/19/99, effective 7/1/99]

CHAPTER 4
AGENCY PROCEDURE FOR RULE MAKING

[Prior to 2/8/89, Veterinary Medicine, Board of[842] 1.4]

The veterinary medicine board hereby adopts the agency procedure for rule making segment of the uniform rules on agency procedure printed in the first volume of the Iowa Administrative Code with the following amendments:

811—4.1(17A,169,272C) Applicability. In lieu of the word “agency”, insert “the board of veterinary medicine (hereinafter referred to as “the board”)”.

811—4.3(17A,169,272C) Public rule-making docket.

4.3(2) In lieu of the words “(commission, board, council, director)”, insert “board”.

811—4.4(17A,169,272C) Notice of proposed rule making.

4.4(3) In lieu of the words “(specify time period)”, insert “one year”.

811—4.5(17A,169,272C) Public participation.

4.5(1) In lieu of the words “(identify office and address)”, insert “the State Veterinarian, Department of Agriculture and Land Stewardship, Wallace State Office Building, East Ninth and Grand, Des Moines, Iowa 50319”.

4.5(5) In lieu of the words “(designate office and telephone number)”, insert “the state veterinarian office at (515)281-5305”.

811—4.6(17A,169,272C) Regulatory analysis.

4.6(2) In lieu of the words “(designate office)”, insert “state veterinarian’s office”.

811—4.10(17A,169,272C) Exemptions from public rule-making procedures.

4.10(2) is not adopted.

811—4.11(17A,169,272C) Concise statement of reasons.

4.11(1) In lieu of the words “(specify the office and address)”, insert “the State Veterinarian, Department of Agriculture and Land Stewardship, Wallace State Office Building, East Ninth and Grand, Des Moines, Iowa 50319”.

811—4.13(17A,169,272C) Agency rule-making record.

4.13(2) In lieu of the words “(agency head)”, insert “chairperson of the board”.

These rules are intended to implement Iowa Code chapter 17A as amended by 1998 Iowa Acts, chapter 1202.

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[Filed 4/30/99, Notice 3/24/99—published 5/19/99, effective 7/1/99]

CHAPTER 5
PUBLIC RECORDS AND FAIR INFORMATION PRACTICES

Insert the fair information practices segment of the Uniform Administrative Rules which is printed in the first volume of the Iowa Administrative Code with the addition of new rules 811—5.9(17A,22) to 811—5.16(17A,22) and the following amendments:

811—5.1(17A,22) Definitions. In lieu of the words “(official or body issuing these rules)” insert “board of veterinary medicine”.

811—5.3(17A,22) Requests for access to records.

5.3(1) Location of record. In lieu of the words “(insert agency head)” insert “state veterinarian as secretary of the board of veterinary medicine”. In lieu of the words “(insert agency name and address)” insert “Board of Veterinary Medicine, State Veterinarian, Department of Agriculture and Land Stewardship, Wallace State Office Building, Des Moines, Iowa 50319”.

5.3(2) Office hours. In lieu of the parenthetical statement, insert “8 a.m. to 4:30 p.m., Monday through Friday, except legal holidays”.

5.3(7) Fees.

a. When charged. To the extent permitted by applicable provisions of law, the payment of fees may be waived when the imposition of fees is inequitable or when a waiver is in the public interest.

c. Supervisory fee. In lieu of the words “(specify time period)” insert “one-half hour”.

811—5.6(17A,22) Procedure by which additions, dissents, or objections may be entered into certain records. In lieu of the words “(designate office)” insert “the board of veterinary medicine”.

811—5.9(17A,22) Disclosures without the consent of the subject.

5.9(1) Open records are routinely disclosed without the consent of the subject.

5.9(2) To the extent allowed by law, disclosure of confidential records may occur without the consent of the subject. Following are instances where disclosure, if lawful, will generally occur without notice to the subject:

a. For a routine use as defined in rule 5.10(17A,22) or in any notice for a particular record system.

b. To a recipient who has provided the agency with advance written assurance that the record will be used solely as a statistical research or reporting record, provided that the record is transferred in a form that does not identify the subject.

c. To another government agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if the activity is authorized by law, and if an authorized representative of such government agency or instrumentality has submitted a written request to the agency specifying the record desired and the law enforcement activity for which the record is sought.

d. To an individual pursuant to a showing of compelling circumstances affecting the health or safety of any individual if a notice of the disclosure is transmitted to the last known address of the subject.

e. To the legislative services agency under Iowa Code section 2A.3.

f. Disclosures in the course of employee disciplinary proceedings.

g. In response to a court order or subpoena.

811—5.10(17A,22) Routine use.

5.10(1) Defined. “Routine use” means the disclosure of a record without the consent of the subject or subjects, for a purpose which is compatible with the purpose for which the record was collected. It includes disclosures required to be made by statute other than the public records law, Iowa Code chapter 22.

5.10(2) To the extent allowed by law, the following uses are considered routine uses of all agency records:

a. Disclosure to those officers, employees, and agents of the agency who have a need for the record in the performance of their duties. The custodian of the record may, upon request of any officer or employee, or on the custodian's own initiative, determine what constitutes legitimate need to use confidential records.

b. Disclosure of information indicating an apparent violation of the law to appropriate law enforcement authorities for investigation and possible criminal prosecution, civil court action, or regulatory order.

c. Disclosure to the department of inspections and appeals for matters in which it is performing services or functions on behalf of the agency.

d. Transfers of information within the agency, to other state agencies, or to local units of government as appropriate to administer the program for which the information is collected.

e. Information released to staff of federal and state entities for audit purposes or for purposes of determining whether the agency is operating a program lawfully.

f. Any disclosure specifically authorized by the statute under which the record was collected or maintained.

811—5.11(17A,22) Consensual disclosure of confidential records.

5.11(1) *Consent to disclosure by a subject individual.* To the extent permitted by law, the subject may consent in writing to agency disclosure of confidential records as provided in rule 5.7(17A,22).

5.11(2) *Complaints to public officials.* A letter from a subject of a confidential record to a public official which seeks the official's intervention on behalf of the subject in a matter that involves the agency may, to the extent permitted by law, be treated as an authorization to release sufficient information about the subject to the official to resolve the matter.

811—5.12(17A,22) Release to subject.

5.12(1) The subject of a confidential record may file a written request to review confidential records about that person as provided in rule 5.6(17A,22). However, the agency need not release the following records to the subject:

a. The identity of a person providing information to the agency need not be disclosed directly or indirectly to the subject of the information when the information is authorized to be held confidential pursuant to Iowa Code section 22.7(18) or other provision of law.

b. Records need not be disclosed to the subject when they are the work product of an attorney or are otherwise privileged.

c. Peace officers' investigative reports may be withheld from the subject, except as required by the Iowa Code. (See Iowa Code section 22.7(5))

d. As otherwise authorized by law.

5.12(2) Where a record has multiple subjects with interest in the confidentiality of the record, the agency may take reasonable steps to protect confidential information relating to another subject.

811—5.13(17A,22) Availability of records.

5.13(1) *General.* Agency records are open for public inspection and copying unless otherwise provided by rule or law.

5.13(2) *Confidential records.* The following records may be withheld from public inspection. Records are listed by category, according to the legal basis for withholding them from public inspection.

a. Sealed bids received prior to the time set for public opening of bids. (Iowa Code section 72.3)

b. Tax records made available to the agency. (Iowa Code sections 422.20 and 422.72)

c. Records which are exempt from disclosure under Iowa Code section 22.7.

d. Minutes of closed meetings of a government body. (Iowa Code section 21.5(4))

e. Identifying details in final orders, decisions and opinions to the extent required to prevent a clearly unwarranted invasion of personal privacy or trade secrets under Iowa Code section 17A.3(1) "d."

f. Those portions of agency staff manuals, instructions or other statements issued which set forth criteria or guidelines to be used by agency staff in auditing, in making inspections, in settling

commercial disputes or negotiating commercial arrangements, or in the selection or handling of cases, such as operational tactics or allowable tolerances or criteria for the defense, prosecution or settlement of cases, when disclosure of these statements would:

- (1) Enable law violators to avoid detection;
- (2) Facilitate disregard of requirements imposed by law; or
- (3) Give a clearly improper advantage to persons who are in an adverse position to the agency. (See Iowa Code sections 17A.2 and 17A.3)

g. Records which constitute attorney work product, attorney-client communications, or which are otherwise privileged. Attorney work product is confidential under Iowa Code sections 22.7(4), 622.10 and 622.11, Iowa R.C.P. 122(c), Fed. R. Civ. P. 26(b)(3), and case law. Attorney-client communications are confidential under Iowa Code sections 622.10 and 622.11, the rules of evidence, the Code of Professional Responsibility, and case law.

h. Any other records made confidential by law.

5.13(3) Authority to release confidential records. The agency may have discretion to disclose some confidential records which are exempt from disclosure under Iowa Code section 22.7 or other law. Any person may request permission to inspect records withheld from inspection under a statute which authorizes limited or discretionary disclosure as provided in rule 5.4(17A,22). If the agency initially determines that it will release such records, the agency may, where appropriate, notify interested parties and withhold the records from inspection as provided in subrule 5.4(3).

811—5.14(17A,22) Personally identifiable information. This rule describes the nature and extent of personally identifiable information which is collected, maintained, and retrieved by the agency by personal identifier in record systems as defined in rule 5.1(17A,22). For each record system, this rule describes the legal authority for the collection of that information, the means of storage of that information and indicates whether a data processing system matches, collates, or permits the comparison of personally identifiable information in one record system with personally identifiable information in another record system. Unless otherwise stated, the authority for this agency to maintain the record is provided by Iowa Code chapter 169. The record systems maintained by the agency are:

5.14(1) Personnel files. “Employees” of the agency are employed through the department of agriculture and land stewardship. Through the department of agriculture and land stewardship, the agency maintains files containing information about “employees,” families and dependents, and applicants for positions with the agency. The files include payroll records, biographical information, medical information relating to disability, performance reviews and evaluations, disciplinary information, information required for tax withholding, information concerning employee benefits, affirmative action reports, and other information concerning the employer-employee relationship. This material includes personally identifiable information such as name, address, social security number and employee payroll number. Some of this information is confidential under Iowa Code section 22.7(11). These records are primarily maintained in paper copy, with some material generated or maintained in a data processing system.

5.14(2) Litigation files. These files or records contain information regarding litigation or anticipated litigation, which includes judicial and administrative proceedings. The records include briefs, depositions, docket sheets, documents, correspondence, attorneys’ notes, memoranda, research materials, witness information, investigation materials, information compiled under the direction of the attorney, and case management records. The files contain materials which are confidential as attorney work product and attorney-client communications. Some materials are confidential under other applicable provisions of law or because of a court order. Persons wishing copies of pleadings and other documents filed in litigation should obtain these from the clerk of the appropriate court which maintains the official copy. These records are primarily maintained in paper copy, with some material generated or maintained in a data processing system.

5.14(3) Contested case matters. These records are collected and maintained pursuant to Iowa Code sections 17A.3(1) “d,” 17A.3(2), 17A.12, and the Iowa Code sections noted in subrule 5.14(4). Contested case matters include all pleadings, motions, briefs, orders, transcripts, exhibits, and physical evidence

utilized in the resolution of the matter, and may, unless released by the licensee, be confidential as stated in subrule 5.14(4). These records are primarily maintained in paper copy, with some material generated or maintained in a data processing system.

5.14(4) *Licensure or certification records.* Under Iowa Code chapter 169, the board regulates by license the profession of veterinary medicine and regulates by certificate veterinary technicians and assistants. Licensure and certification records generally include, but are not limited to, information identifying the licensee by name or code, location, and form of business entity, including the names of corporate principals. Examination and compliance reports may be included in the license records. These records may include confidential information protected from disclosure under Iowa Code section 22.7(3), 22.7(6), or 22.7(18). In addition, information relating to examination results is confidential under Iowa Code section 169.6, and information regarding complaints and investigations of licensees is confidential under Iowa Code section 272C.6. These records are maintained jointly with the department of agriculture and land stewardship. These records are primarily maintained in paper copy, with some material generated or maintained in a data processing system.

5.14(5) *Laboratory reports.* In furtherance of licensure and certification regulation under subrule 5.14(4), the board may procure laboratory reports consisting of analytical results of samples. These records may include confidential information protected from disclosure under Iowa Code section 22.7(3), 22.7(6), or 22.7(18), as well as those provisions stated in subrule 5.14(4). These records are primarily maintained in paper copy, with some material generated or maintained in a data processing system. These records are identified by the name or code of the subject of the investigation.

811—5.15(17A,22) Other groups of records. This rule describes groups of records maintained by the agency other than record systems as defined in rule 5.1(17A,22). These records are routinely available to the public. However, the agency's files of these records may contain confidential information as discussed in rule 5.13(17A,22). The records listed may contain information about individuals.

1. Administrative records. This includes documents concerning budget, property inventory, purchasing, yearly reports, office policies for employees, time sheets, printing and supply requisitions.

2. Publications. The office receives a number of books, periodicals, newsletters, government documents, etc. These materials would generally be open to the public but may be protected by copyright law. Most publications of general interest are available in the state law library.

3. Rule-making records. Public documents generated during the promulgation of agency rules, including notices and public comments, are available for public inspection.

4. Board records. Agendas, minutes, and materials prepared or maintained by the board are available from the office, except those records concerning closed sessions which are exempt from disclosure under Iowa Code section 21.5 or which are otherwise confidential by law. Board records contain information about people who participate in meetings. This information is collected pursuant to Iowa Code section 21.3. This information is not stored on an automated data processing system.

5. All other records that are not exempted from disclosure by law.

811—5.16(17A,22) Data processing systems. None of the data processing systems used by the agency permit the comparison of personally identifiable information in one record system with personally identifiable information in another record system.

811—5.17(169,252J) Release of confidential licensing information for child support recovery purposes. Notwithstanding any statutory confidentiality provision, the board may share information with the child support recovery unit through manual or automated means for the sole purpose of identifying licensees of applicants subject to enforcement under Iowa Code Supplement chapter 252J or 598.

811—5.18(17A,22,169,261) Release of information to the college student aid commission. Notwithstanding any statutory confidentiality provisions, the board may share

information with the college student aid commission for the sole purpose of identifying applicants or registrants subject to enforcement under Iowa Code chapter 261.

These rules are intended to implement Iowa Code chapters 17A and 22 and Iowa Code Supplement chapter 252J.

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CHAPTER 6
APPLICATION FOR LICENSURE

[Prior to 2/8/89, Veterinary Medicine, Board of[842] Ch 2]

Chapter 6, Suspension or Revocation of License, rescinded IAC 2/8/89; see 811—Ch 10.

811—6.1(169) Procedure.

6.1(1) Application to take examination. Any person desiring to take the National Board Examination (NBE) or the Clinical Competency Test (CCT) for a license to practice veterinary medicine shall make application 60 days before the date set for the beginning of the examination to: Bureau of Animal Industry, Board of Veterinary Medicine, Iowa Department of Agriculture and Land Stewardship, Wallace State Office Building, East 9th and Grand Avenue, Des Moines, Iowa 50319, on forms to be provided by the board. The application form shall be completely filled out. The completed application shall include two current passport size and quality photographs of the applicant. Incomplete applications shall be returned to the applicant along with the tendered fee and a written statement setting forth the reasons for such rejections.

The application shall be accompanied by satisfactory evidence of having graduated from an accredited or approved school of veterinary medicine. However, applications for either the NBE or CCT may be accepted without evidence of graduation if the applicant provides satisfactory evidence that the applicant is expected to graduate within six months of the date of the examination.

Applications to take the NBE or CCT will not be accepted from any person who has previously taken and passed that examination in any jurisdiction, except on case-by-case petition to the board for good cause shown or other order of the board.

6.1(2) License requirements. Prior to the issuance of a license, the applicant shall:

- a.* Successfully complete the NBE and CCT as provided in rule 811—7.1(169);
- b.* Remit the proper application fee for licensure;
- c.* Graduate from an accredited or approved school of veterinary medicine, or receive a certificate from the Educational Commission for Foreign Veterinary Graduates (ECFVG);
- d.* Provide a statement indicating all jurisdictions in which the applicant is or has ever been licensed to practice veterinary medicine. The applicant shall consent to release to the board license information from jurisdictions in which the applicant is or has ever been licensed;
- e.* The board may require from an applicant or obtain from other sources such other information pertinent to character and education of the applicant as it may deem necessary in order to pass upon the applicant's qualifications; and
- f.* Submit evidence of having completed at least an average of 20 hours of approved continuing education for each year of the previous three years.

Upon payment of the prorated triennial license fee, a license issued upon completion of these requirements is valid through June 30 of the next triennium year.

6.1(3) An accredited or approved college of veterinary medicine is a school which has satisfied the "Essential Requirements of an Accredited or Approved College of Veterinary Medicine" as revised and adopted by the American Veterinary Medical Association (AVMA), July 1987, which is hereby adopted by reference. An evaluation by the AVMA Council on Education finding that these criteria are satisfied will be automatically accepted absent sufficient evidence to the contrary.

811—6.2(169) Fee schedule. The following fees shall be collected by the board and shall not be refunded except by board action in unusual instances such as documented illness of the applicant, death of the applicant, inability of the applicant to comply with the rules of the board, or withdrawal of application provided withdrawal is received in writing 45 days prior to the examination date. Examination fees shall be nontransferrable from one examination to another.

The fee for the National Board Examination (NBE) or Clinical Competency Test (CCT), utilized by the board as a part of their examination process, shall be the fees charged that year by the Professional Examination Service (PES) and approved by the board, plus the costs incurred by the board for administration of the NBE or CCT examination.

Based on the board's anticipated financial requirements, the following fees are hereby adopted:

License—application fee	\$50
National Board Examination (NBE) cost of PES examination plus.	\$10
Clinical Competency Test (CCT) cost of PES examination plus.	\$10
Triennial license	\$45
License by endorsement—application fee	\$25
Late renewal penalty	\$100
Reinstatement fee	\$45
Duplicate license.	\$15
Temporary permit	\$25
Temporary permit application fee	\$15
Certification of licensure	\$10
Charge for returned checks.	\$10

This rule is intended to implement Iowa Code section 169.5.

811—6.3(169) Reinstatement fee. All applications for reinstatement of lapsed or inactive license to practice veterinary medicine shall be filed with the secretary of the board, together with the then current license fee, the current reinstatement fee, and all, if lapsed, applicable penalties.

811—6.4(169) Graduates of foreign schools. Graduates of foreign schools which, pursuant to the AVMA criteria, are not AVMA-approved but are AVMA-listed may make application to take the NBE or the CCT in this state provided that such application include a copy of the applicant's diploma or certificate indicating the award of a degree in veterinary medicine from an AVMA-listed college, and a letter from the Educational Commission for Foreign Veterinary Graduates (ECFVG) verifying that the applicant is or will be participating in an ECFVG certification program administered by an institution in Iowa or a state contiguous to Iowa.

Graduates of foreign schools which are not AVMA-approved but are AVMA-listed will not be considered for licensing until they have received the certificate granted by the Educational Commission for Foreign Veterinary Graduates. A license will not be issued to an applicant until the applicant submits a copy of the applicant's ECFVG certificate.

811—6.5(169) License by endorsement.

6.5(1) A license by endorsement may be granted by the board pursuant to either Iowa Code section 169.10(1) or 169.10(2). An applicant shall make application for a license by endorsement on a form provided by the board. The application fee and triennial license fee shall accompany the application. In addition to the information specified in section 169.10, the applicant shall supply all of the following:

a. A statement indicating all jurisdictions in which the licensee is or has ever been licensed to practice veterinary medicine. The applicant shall consent to release to the board license information from jurisdictions in which the applicant is or has ever been licensed.

b. The board may require from the applicant or obtain from other sources such other information pertinent to character and education of the applicant as it may deem necessary in order to pass upon the applicant's qualifications.

c. Evidence of approved continuing education totaling at least 60 hours obtained in the previous three years.

6.5(2) If the non-Iowa license of an applicant under Iowa Code section 169.10(1) was issued after January 1, 1965, the applicant shall have successfully completed the NBE. If the applicant's non-Iowa license was issued after January 1, 1980, the applicant shall have successfully completed the NBE and CCT according to rule 811—7.1(169).

6.5(3) An applicant under Iowa Code section 169.10(2) shall also include a copy of the applicant's board or college specialty certificate. For the purpose of this rule, a specialty board or college means

a specialty board or college which has been officially recognized by the AVMA. Changes of specialty status shall be reported to the board within 30 days of the action.

811—6.6(169) Issuance of limited license; specialization.

6.6(1) The board may grant a license to practice veterinary medicine within a limited and specified scope:

- a. As an option for board discipline under 811—Chapter 10.
- b. Rescinded IAB 11/18/98, effective 12/23/98.
- c. To an applicant requesting limited or specialized status.

6.6(2) A veterinarian holding either a limited license or a full license shall not claim or imply specialization unless the veterinarian is a member in good standing of the respective specialty board or college recognized by the AVMA.

811—6.7(169) License renewal.

6.7(1) A license to practice veterinary medicine shall be issued for a three-year period, except that new licenses issued during a triennium shall be issued for the balance of that triennium. A license shall expire on June 30 of the third year of the triennium.

6.7(2) At least two months before the end of a triennium, a renewal notice will be sent to each licensee at the last address in the board's file. Failure to receive the notice shall not relieve the licensee of the obligation to pay triennium renewal fees on or before June 30.

6.7(3) The license renewal application shall include a statement which certifies the jurisdictions in which the licensee is currently or has in the past been licensed to practice veterinary medicine.

6.7(4) Renewal fees shall be received by the board on or before the end of the triennium on June 30. Whenever renewal fees are not received as specified, the license lapses and the practice of veterinary medicine must cease until all renewal fees and penalty fees are received by the board.

6.7(5) If the renewal and penalty fees are not received by the board on or by August 1 after the license has lapsed, an application for reinstatement must be filed with the board with a reinstatement fee in addition to the renewal fee and the penalty fee.

811—6.8(169,261) Issuance or renewal of a license to practice veterinary medicine—denial. The board shall deny the issuance or renewal of a license to practice veterinary medicine upon receipt of a certificate of noncompliance from the college student aid commission according to the procedures set forth in 1998 Iowa Acts, chapter 1081. In addition to the procedures contained therein, the following shall apply.

6.8(1) The notice required by 1998 Iowa Acts, chapter 1081, section 6, shall be served by restricted certified mail, return receipt requested, or by personal service in accordance with the Iowa Rules of Civil Procedure. Alternatively, the applicant may accept service personally or through authorized counsel.

6.8(2) The effective date of the denial of the issuance of the license or renewal of a license, as specified in the notice required by 1998 Iowa Acts, chapter 1081, section 6, shall be 60 days following service of the notice upon the applicant.

6.8(3) The board's executive secretary is authorized to prepare and serve the notice required by 1998 Iowa Acts, chapter 1081, section 6, upon the applicant.

6.8(4) Applicants shall keep the board informed of all court actions and all college student aid commission actions taken under or in connection with Iowa Code chapter 261 and shall provide the board copies, within seven days of filing or issuance, of all applications filed with the district court pursuant to 1998 Iowa Acts, chapter 1081, section 7, all court orders entered in such actions, and withdrawals of certificates of noncompliance by the college student aid commission.

6.8(5) All board fees required for application or renewal must be paid by applicants and all continuing education requirements must be met before a license will be issued, renewed, or reinstated after the board has denied the issuance or renewal of a license pursuant to Iowa Code chapter 261.

6.8(6) In the event an applicant timely files a district court action following service of a board notice pursuant to 1998 Iowa Acts, chapter 1081, sections 6 and 7, the board shall continue with the intended

action described in the notice upon the receipt of a court order lifting the stay, dismissing the action, or otherwise directing the board to proceed. For purposes of determining the effective date of the denial of the issuance or renewal of a license, the board shall count the number of days before the court action was disposed of by the court.

6.8(7) The board shall notify the applicant in writing through regular first-class mail, or such other means as the board deems appropriate in the circumstances, within ten days of the effective date of the denial of the issuance or renewal of a license and shall similarly notify the applicant when the license is issued or renewed following the board's receipt of a withdrawal of the certificate of noncompliance.

These rules are intended to implement Iowa Code sections 17A.3, 169.5, 169.8, 169.9, 169.10, and 169.12.

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CHAPTER 7
EXAMINATIONS

[Prior to 2/8/89, Veterinary Medicine, Board of[842] Ch 3]

811—7.1(169) Examination procedure. In order to successfully complete the National Board Examination, an applicant shall achieve a minimum converted score of 70. In addition, in order to successfully complete the CCT, the applicant shall obtain a minimum converted score of 75. The National Board Examination and the CCT are prepared by the Professional Examination Service for use by the state board of veterinary examiners.

7.1(1) Examinations shall be given in April and December each year. The dates for the examination shall be those set by the National Board Examination Committee. Examinations shall be held at a site to be determined by the board at least 30 days before the date of the examination.

7.1(2) Upon request, the board will attempt to provide adequate individualized testing arrangements for applicants who establish the existence of a verified disability including a verified learning disability, consistent with the provisions of the Americans with Disabilities Act of 1990, and regulations promulgated thereunder. Verification may be provided by a testing or evaluation agency approved by the board or by a physician approved by the board.

811—7.2(169) Conduct. The following rules shall govern the conduct of examinations and shall be strictly adhered to throughout the entire examination. An examinee who violates any of the rules, or instructions applicable to them may be declared by the board to have failed the examination.

7.2(1) Unless otherwise notified in writing, applicants must appear at the appointed hour on the first day of examination at the designated site as fixed by the board, at which time the board shall assign each applicant a number for identification purposes during such examination.

7.2(2) The ability of an examinee to read and interpret instructions shall be evaluated and considered by the board as part of the examination.

7.2(3) Any examinee who gives or receives unauthorized assistance in any portion of the examination may be dismissed from the examination.

7.2(4) If the examinee fails the examination and desires to take a subsequent examination, the examinee shall notify the board at least 60 days prior to the first day of the next examination, shall certify that the material statements contained in the original applications are currently true and correct, shall supplement that information as necessary, and shall pay the requisite fee.

These rules are intended to implement Iowa Code sections 17A.3, 169.5, and 169.9.

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CHAPTER 8
AUXILIARY PERSONNEL
[Prior to 2/8/89, Veterinary Medicine, Board of[842] Ch 4]

811—8.1(169,17A) Definitions. As used in these rules, the following terms shall mean:

“*Accredited school of veterinary technology*” means a two-year college level training program providing basic training leading to a certificate of completion of a two-year program recognized and approved by the AVMA committee on accreditation of training for veterinary technicians or recognized and approved by the board.

“*Board*” means board of veterinary medicine.

“*Department*” shall mean the Iowa department of agriculture and land stewardship.

“*Veterinary assistant*” means an assistant employed by a licensed veterinarian for a purpose other than performing diagnosis, issuing prescriptions or performing surgery and includes, among other assistants, registered veterinary technicians.

“*Veterinary technician*” means any citizen of the United States who shall have graduated in veterinary technology from a two-year AVMA accredited school of veterinary technology; or in lieu thereof has assisted a licensed veterinarian for five years prior to 1980, or worked under the direction of a licensed veterinarian for at least three years, including at least one year of formal training approved by the board, in veterinary technology prior to 1981; and who shall have successfully passed an examination prescribed by the board.

811—8.2(169) Registration of veterinary technicians. All veterinary technicians shall be under the direct control of the board and shall be registered with the state veterinarian, bureau of animal industry, Iowa department of agriculture and land stewardship. Each veterinary technician must pass both a written and practical test as approved by the board. Applications for registration shall be obtained from and remitted to the board. Successful candidates shall be issued a certificate by the board stating that the named candidate is registered as a veterinary technician.

811—8.3(169) Examination. An application fee of \$25 shall accompany the application to take the examination; and both must be received by the board at least 60 days before the examination. An additional fee shall be submitted for the national board written examination as provided by the professional examination service, when utilized by the board as part of their examination process, which shall be the fees charged for the examination by the professional examination service plus \$10 for the costs of administration. Examinations shall be given annually in June at a site to be designated by the board at least 30 days before the date of the examination.

This rule is intended to implement Iowa Code sections 169.5(8), 169.9 and 169.12.

811—8.4 Reserved.

811—8.5(169) Supervision. All veterinary assistants, including veterinary technicians, shall be employed by and receive compensation from and be under the direct supervision of a licensed or license exempt veterinarian, and shall function at the same place of business as the veterinarian. Such supervision shall include, but not be limited to, the availability of the veterinarian on the premises.

8.5(1) Veterinarian's responsibility :

a. To personally examine the animal within 12 hours before the assistant carries out any procedures.

b. To direct, control and supervise the conduct of the assistant in the assistant's work.

8.5(2) Veterinary assistant's responsibility :

a. The veterinary assistant, including registered veterinarian technicians, shall not perform surgery; shall not make a diagnosis and prognosis of animal diseases; shall not prescribe drugs, medicine and appliances, and shall not administer rabies vaccine.

b. Under conditions of an emergency, a veterinary assistant including a registered veterinary technician may render without supervision such lifesaving aid and treatment as follows: administration

of oxygen; maintenance of airways including the nonsurgical insertion of an endotracheal tube; and control of hemorrhage. Under conditions of emergency, a registered veterinary technician but not an unregistered veterinary assistant may render such additional lifesaving aid and treatment as follows: placement of an IV catheter and the administration of fluids; external cardiac massage; and the administration of corticosteroids. Emergency aid and treatment, if rendered to an animal not in the presence of a licensed veterinarian, shall only be continued under the direction of a licensed veterinarian, which in the case of emergency may include telephone or radio contact by a veterinarian en route to the site, until the veterinarian arrives in a timely manner. "Emergency" for the purpose of this rule means that the animal has been placed in a life-threatening condition where immediate treatment is necessary to sustain life.

811—8.6(169) Revocation or suspension of veterinary technician's certificate. The following shall be grounds for revocation or suspension of a certificate at the discretion of the board:

1. Fraud, misrepresentation or deception in obtaining a certificate.
2. Conviction of a felony, in which case the record of such conviction will be conclusive evidence.
3. Chronic inebriety or habitual use of drugs.
4. For having professional connection with, or lending one's name to any illegal practice of veterinary medicine and the various branches thereof.
5. Conduct reflecting unfavorably on the vocation of veterinary technology.
6. Conviction on the charge of cruelty to animals.
7. Failure to satisfy the continuing education requirements of rule 8.10(169,272C).

811—8.7(169) Action against veterinarians. The board of veterinary medicine shall take action against any veterinarian licensed to practice in the state of Iowa who:

1. Permits or directs any veterinary assistant, including a registered veterinary technician, to perform veterinary duties involving diagnosis, prescription or surgery.
2. Permits or directs any veterinary assistant, including a registered veterinary technician, to perform any act which would be a legal or ethical violation if committed by the veterinarian.

811—8.8(169,272C) Disciplinary procedure. Disciplinary action taken under rule 8.6(169) or 8.7(169) shall follow the procedure established by 811—10.50(169,272C). Where appropriate, references in 811—10.50(169,272C) to a person licensed to practice veterinary medicine shall be construed to mean persons certified as a veterinary assistant or technician.

811—8.9(169,272C) Certification by endorsement. On a case-by-case basis, the board may issue certification by endorsement and without examination to applicants who hold certification or licensure as veterinary technicians in another jurisdiction.

811—8.10(169,272C) Continuing education.

8.10(1) At least 30 hours of continuing education in courses approved by the board of veterinary medicine shall be completed triennially by each registered veterinary technician. The registrant has the responsibility for financing continuing education. These credit hours may be obtained by attending approved scientific seminars and meetings on the basis of one credit hour for each hour of attendance. Attendance at any board-approved national, state or regional meeting will be acceptable. Credit for qualified graduate college courses may be approved on the basis of multiplying each college credit hour by 10, to a maximum of 15 hours during any one triennial. A maximum of 10 hours during any one triennial may be achieved by the completion of approved home study courses.

8.10(2) Each registrant shall obtain the 30 credit hours between the registrant's certificate anniversary date and the last day of the following three-year period. However, a registrant who graduated from an accredited college of veterinary technology within three years of the issuance of an Iowa certificate is required to obtain only 20 credit hours for the first triennial. Continuing education credits in excess of 30 hours for any three-year period may be carried over to the next triennial period, but the total number of credits carried over shall not exceed 10 hours.

8.10(3) Completion of the continuing education will be reported to the secretary of the board of veterinary medicine on forms provided by the board by December 31 of the triennial anniversary year. The reporting form must be signed by the registrant and accompanied by an administration fee of \$15.

8.10(4) Compliance with this rule and subrule 8.6(7) is waived until January 1, 1993. Registrants whose certificate triennial anniversary dates fall in the year 1993 shall complete and report 10 credit hours. Registrants whose certificate triennial anniversary dates fall in the year 1994 shall complete and report 20 credit hours. All registrants whose certificate triennial anniversary dates fall in the year 1995 and subsequent years shall complete and report the full 30 credit hours.

These rules are intended to implement Iowa Code sections 17A.3, 169.4, 169.5, 169.9 and 169.20.

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[◇] Two or more ARCs

CHAPTER 9
TEMPORARY PERMITS

811—9.1(169) Eligibility.

9.1(1) *Pending state board examination.* Rescinded IAB 11/18/98, effective 12/23/98.

9.1(2) *Temporary in-state practice.* A temporary permit may be issued upon application to a qualified applicant who does not also seek a full Iowa license. For the purpose of this subrule, “qualified applicant” means a person who:

a. Has graduated from an accredited or approved school of veterinary medicine or has received an ECFVG certificate.

b. Rescinded IAB 11/18/98, effective 12/23/98.

c. Is licensed in good standing in another jurisdiction.

d. If the applicant’s non-Iowa license was issued after January 1, 1965, the applicant shall have successfully completed the NBE. If the applicant’s non-Iowa license was issued after January 1, 1980, the applicant shall have successfully completed the NBE and CCT.

The temporary permit shall be issued for a period of no more than 180 days, and no more than one permit shall be issued to a person during each calendar year.

811—9.2(169) Application.

9.2(1) An application for a temporary permit shall be made on forms provided by the board. The applicant shall provide a statement indicating all jurisdictions in which the licensee is or has ever been licensed to practice veterinary medicine. The applicant shall consent to release to the board license information from jurisdictions in which the applicant is or has ever been licensed.

9.2(2) The board may require from an applicant or obtain from other sources such other information pertinent to character and education of the applicant as it may deem necessary in order to pass upon the applicant’s qualifications.

9.2(3) In the case of an applicant under subrule 9.1(2), the applicant shall provide evidence of approved continuing education totaling at least 60 hours obtained in the previous three years.

9.2(4) The temporary permit fee and the application fee shall accompany the application.

811—9.3(169) Supervision. Permit holders under subrule 9.1(2) shall establish and maintain an association with a person currently holding an Iowa license in good standing. The association may be either as an employee, employer, or formal partnership. The licensed veterinarian shall be in a position to regularly observe the activities of the permit holder. The permit holder shall provide accurate and current information to the board as to this association in order to maintain the temporary permit.

811—9.4(169) Practice without benefit of temporary permit or full Iowa license. An applicant for a temporary permit or a full Iowa license shall not engage in the practice of veterinary medicine unless and until a temporary permit or full Iowa license is granted by the board. Prior to the issuance of the temporary permit or full Iowa license, an applicant who is otherwise qualified under rule 9.1(169) may perform within the same scope of authority as a registered veterinary technician, as provided in 811—Chapter 8. An applicant for a temporary permit or full Iowa license who engages in the practice of veterinary medicine prior to the issuance of the temporary permit or full Iowa license is subject to denial or revocation of the temporary permit, denial or revocation of the full Iowa license, and referral for civil or criminal prosecution, at the board’s discretion.

These rules are intended to implement Iowa Code section 169.11.

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CHAPTER 10
DISCIPLINE

[Prior to 2/8/89, see Veterinary Medicine, Board of[842] Ch 6]

811—10.1(17A,169,272C) Board authority. The board of veterinary medicine (hereinafter referred to as “the board”) may discipline a veterinarian for any grounds stated in Iowa Code chapters 169 and 272C or rules promulgated thereunder.

811—10.2(17A,169,272C) Complaints and investigations. Complaints are allegations of wrongful acts or omissions relating to the ethical or professional conduct of a licensee.

10.2(1) In accordance with Iowa Code section 272C.3(1) “c,” the board shall investigate or review, upon written complaint or upon its own motion pursuant to other information received by the board, alleged acts or omissions which the board reasonably believes constitute cause for licensee discipline.

10.2(2) The executive secretary or authorized designee shall investigate complaints in order to determine the probability that a violation of law or rule has occurred.

811—10.3(17A,169,272C) Investigatory subpoena powers. The board shall have the authority to issue an investigatory subpoena in accordance with the provisions of Iowa Code section 17A.13.

10.3(1) A subpoena which requires production of real evidence that is necessary to an investigation may be issued upon the authority of the executive secretary or a designee.

10.3(2) In the event obedience to a subpoena is refused, the requesting party may petition the district court for enforcement.

811—10.4(17A,169,272C) Board action. The board shall review investigative conclusions and take one of the following actions:

1. Close the investigative case without action.
2. Request further inquiry.
3. Appoint a peer review committee to assist with the investigation.
4. Determine the existence of sufficient probable cause and order a disciplinary hearing to be held in compliance with Iowa Code section 272C.6.

811—10.5(17A,169,272C) Peer review committee. The board may establish a peer review committee to assist with the investigative process when deemed necessary.

10.5(1) The committee shall determine if the conduct of the licensee conforms to minimum standards of acceptable and prevailing practice of veterinary medicine and submit a report of its findings to the board.

10.5(2) The board shall review the committee’s findings and proceed with action available under rule 10.4(17A,169,272C).

10.5(3) The peer review committee shall observe the confidentiality requirements imposed by Iowa Code section 272C.6.

811—10.6(17A,169,272C) Grounds for discipline. The board may impose any of the disciplinary sanctions set forth in rule 10.7(17A, 169, 272C), including civil penalties in an amount not to exceed \$1000, when the board determines that the licensee is guilty of any of the following acts or offenses:

10.6(1) Fraud in procuring a license, which includes but is not limited to an intentional perversion of the truth in making application for a license to practice veterinary medicine in this state, and includes false representations of a material fact, whether by word or by conduct, by false or misleading allegations, or by concealment of that which should have been disclosed when making application for a license in this state, or attempting to file or filing with the board or the Iowa department of agriculture and land stewardship any false or forged diploma, certificate, affidavit, identification, or qualification in making an application for a license in this state.

10.6(2) Professional incompetency, which includes but is not limited to violations of the standards of practice as set out in 811—Chapter 12. Professional incompetency may also be established by:

- a.* A substantial lack of knowledge or ability to discharge professional obligations within the scope of the veterinarian's practice;
- b.* A substantial deviation by the veterinarian from the standards of learning or skill ordinarily possessed and applied by other veterinarians acting in the same or similar circumstances;
- c.* A failure by a veterinarian to exercise in a substantial respect that degree of care which is ordinarily exercised by the average veterinarian acting in the same or similar circumstances;
- d.* A willful or repeated departure from or the failure to conform to the minimal standards of acceptable and prevailing practice of veterinarians.

10.6(3) Knowingly making misleading, deceptive, untrue or fraudulent representations in the practice of a profession or engaging in unethical conduct or practice harmful or detrimental to the public. Proof of actual injury need not be established.

- a.* Knowingly making misleading, deceptive, untrue or fraudulent representations in the practice of a profession includes, but is not limited to, an intentional perversion of the truth, either orally or in writing, by a veterinarian in the practice of veterinary medicine and includes any representation contrary to legal or equitable duty, trust or confidence and is deemed by the board to be contrary to good conscience, prejudicial to the public welfare or may operate to the injury of another.
- b.* Engaging in unethical conduct includes, but is not limited to, a violation of the standards of practice as set out in 811—Chapter 12, and may include acts or offenses in violation of the code of ethics of the American Veterinary Medical Association (AVMA).
- c.* Practice harmful or detrimental to the public includes, but is not limited to, the failure of a veterinarian to possess and exercise that degree of skill, learning and care expected of a reasonable, prudent veterinarian acting in the same or similar circumstances, including a violation of the standards of practice as set out in 811—Chapter 12, or when a veterinarian is unable to practice veterinary medicine with reasonable skill and safety to a client's animals as a result of a mental or physical impairment or chemical abuse.
- d.* Practice harmful or detrimental to the public includes, but is not limited to, the use of a rubber stamp to affix a signature to a prescription. A person who is unable, due to a physical handicap, to make a written signature or mark may substitute in lieu of a signature a rubber stamp which is adopted by the handicapped person for all purposes requiring a signature and which is affixed by the handicapped person or affixed by another person upon the request of the handicapped person and in their presence.
- e.* Practice harmful or detrimental to the public includes, but is not limited to, the practice of maintaining any presigned prescription which is intended to be completed and issued at a later time.

10.6(4) Habitual intoxication or addiction to the use of drugs, which includes but is not limited to the inability of a veterinarian to practice veterinary medicine with reasonable skill and safety by reason of the excessive use of alcohol, drugs, narcotics, chemicals or other types of material on a continuing basis, or the excessive use of alcohol, drugs, narcotics, chemicals or other type of material which may impair a veterinarian's ability to practice the profession with reasonable skill and safety. The board may require participation in a treatment program as a condition of license probation or suspension, and shall consider the licensee's willingness to participate in a treatment program when determining the appropriate degree of disciplinary sanction.

10.6(5) Conviction of a felony related to the profession or occupation of the licensee, or the conviction of any felony that would affect the licensee's ability to practice within a profession. A copy of the record of conviction or plea of guilty shall be conclusive evidence.

Conviction of a felony related to the profession or occupation of the licensee or the conviction of any felony that would affect the licensee's ability to practice within a profession includes, but is not limited to, the conviction of a veterinarian who has committed a public offense in the practice of their profession which is defined or classified as a felony under state or federal law, or who has violated a statute or law designated as a felony in this state, another state, or the United States, which statute or law relates to the practice of veterinary medicine or who has been convicted of a felonious act, which is so contrary to honesty, justice or good morals, and so reprehensible as to violate the public confidence and trust imposed upon a veterinarian in this state.

10.6(6) Fraud in representations as to skill or ability, which includes but is not limited to a veterinarian's having made misleading, deceptive or untrue representations as to the veterinarian's competency to perform professional services for which the veterinarian is not qualified to perform by training or experience.

10.6(7) Use of untruthful or improbable statements in advertisements, which includes but is not limited to an action by a veterinarian in making information or intention known to the public which is false, deceptive, misleading or promoted through fraud or misrepresentation and includes statements which may consist of, but not be limited to:

1. Inflated or unjustified expectations of favorable results;
2. Self-laudatory claims that imply that the veterinarian engaged in a field or specialty of practice for which the veterinarian is not qualified. A veterinarian is not qualified to claim or imply specialization unless the veterinarian is a member in good standing of the respective specialty board or college recognized by the AVMA;
3. Representations that are likely to cause the average person to misunderstand; or
4. Extravagant claims or claims of extraordinary skills not recognized by the veterinary profession.

10.6(8) Willful or repeated violations of the provisions of Iowa Code chapters 169 and 272C and rules promulgated thereunder by the board.

10.6(9) Violating a statute or law of this state, another state, or the United States, without regard to its designation as either felony or misdemeanor, which statute or law relates to the practice of veterinary medicine.

10.6(10) Failure to report a license revocation, suspension or other disciplinary action taken by a licensing authority of another state, territory or country within 30 days of the final action by such licensing authority. A stay by an appellate court shall not negate this requirement; however, if such disciplinary action is overturned or reversed by a court of last resort, such report shall be expunged from the records of the board.

10.6(11) Failure of licensee or an applicant for licensure in this state to report any voluntary agreement to restrict the practice of veterinary medicine entered into in another state, district, territory or country, or failure to report any adverse judgment in a malpractice action to which the licensee is a party, and every settlement of a claim against the licensee alleging malpractice, within 30 days of said voluntary agreement, adverse judgment, or settlement.

10.6(12) Knowingly aiding, assisting, procuring, or advising a person to unlawfully practice veterinary medicine.

10.6(13) Being guilty of a willful or repeated departure from, or the failure to conform to, the minimal standard of acceptable and prevailing practice of veterinary medicine in which proceeding actual injury to a patient need not be established, which includes, but is not limited to, a violation of the standards of practice as set out in 811—Chapter 12; or the committing by a veterinarian of an act contrary to honesty, justice or good morals, whether the same is committed in the course of practice or otherwise, and whether committed within or without this state, where such act substantially relates to the practice of veterinary medicine.

10.6(14) Inability to practice veterinary medicine with reasonable skill and safety by reason of a mental or physical impairment or chemical abuse.

10.6(15) Violating a lawful order of the board previously entered by the board in a disciplinary hearing.

10.6(16) Being adjudged mentally incompetent by a court of competent jurisdiction. Such adjudication shall automatically suspend a license for the duration of the license unless the board orders otherwise.

10.6(17) Indiscriminately or promiscuously prescribing, administering or dispensing any drug; or prescribing, administering or dispensing any drug for other than a lawful purpose.

10.6(18) Knowingly submitting a false report of continuing education or failure to submit the triennial report of continuing education.

10.6(19) Failure to comply with a subpoena issued by the board.

10.6(20) Willful or gross negligence.

10.6(21) Obtaining any fee by fraud or misrepresentation.

10.6(22) Negligence in failing to exercise due care in the delegation of veterinary services to or supervision of registered veterinary technicians, veterinary assistants, employees or other individuals, whether or not injury results.

10.6(23) Violating any of the grounds for the revocation or suspension of a license as listed in Iowa Code section 169.13 or these rules.

10.6(24) The board shall suspend or revoke a license to practice veterinary medicine upon receipt of a certificate of noncompliance from the college student aid commission according to the procedures set forth in Iowa Code chapter 261. In addition to the procedures contained therein, the following shall apply.

a. The notice required by Iowa Code section 261.126 shall be served by restricted certified mail, return receipt requested, or by personal service in accordance with the Iowa Rules of Civil Procedure. Alternatively, the applicant may accept service personally or through authorized counsel.

b. The effective date of revocation or suspension of a license, as specified in the notice required by Iowa Code section 261.126 shall be 60 days following service of the notice upon the applicant.

c. The board's executive secretary is authorized to prepare and serve the notice required by Iowa Code section 261.126 and is directed to notify the licensee that the license will be suspended, unless the license is already suspended on other grounds. In the event a license is on suspension, the executive secretary shall notify the licensee of the board's intention to revoke the license.

d. Licensees shall keep the board informed of all court actions and all college student aid commission actions taken under or in connection with Iowa Code chapter 261 and shall provide the board copies, within seven days of filing or issuance, of all applications filed with the district court pursuant to Iowa Code section 261.127, all court orders entered in such actions, and withdrawals of certificates of noncompliance by the college student aid commission.

e. All board fees required for renewal or reinstatement must be paid by the applicant and all continuing education requirements must be met before a license will be renewed or reinstated after the board has denied the renewal or reinstatement of a license pursuant to Iowa Code chapter 261.

f. In the event a licensee timely files a district court action following service of a board notice pursuant to Iowa Code sections 261.126 and 261.127, the board shall continue with the intended action described in the notice upon the receipt of a court order lifting the stay, dismissing the action, or otherwise directing the board to proceed. For purposes of determining the effective date of the denial of the renewal, or reinstatement of a license, the board shall count the number of days before the court action was disposed of by the court.

g. The board shall notify the licensee in writing through regular first-class mail, or such other means as the board deems appropriate in the circumstances, within ten days of the effective date of the suspension or revocation of a license and shall similarly notify the applicant when the license is reinstated following the board's receipt of a withdrawal of the certificate of noncompliance.

10.6(25) Having the person's license to practice veterinary medicine revoked or suspended, or having other disciplinary action taken by a licensing authority of another state, territory, or country, or having the person's U.S.D.A. accreditation revoked, suspended or other disciplinary action taken against the accreditation. A certified copy of the record or order of suspension, revocation, or disciplinary action is conclusive or prima facie evidence.

811—10.7(17A,169,272C) Sanctions. The board has authority to impose the following disciplinary sanctions:

1. Revoke a license.
2. Suspend a license until further order of the board or for a specified period.
3. Prohibit permanently, until further order of the board or for a specified period, the engaging in specified procedures, methods or acts.
4. Impose a period of probation.
5. Require additional education or training.
6. Require a reexamination.

7. Order a physical or mental examination.
8. Impose civil penalties not to exceed \$1000.
9. Issue citation and warning.
10. Impose such other sanctions allowed by law as may be appropriate.

811—10.8(17A,169,272C) Panel of specialists. The board may appoint a panel of veterinarians who are specialists to ascertain the facts of a case pursuant to Iowa Code section 272C.6(2). The board chairperson or designee shall appoint the presiding officer.

10.8(1) The executive secretary shall set the date, time, and location of the hearing and make proper notification to all parties.

10.8(2) The panel of specialists shall:

- a. Enter into the record the names of the presiding officer, members of the panel, the parties and their representatives.
- b. Enter into the record the notice and evidence of service, order for hearing, statement of charges, answer, if available, and any other pleadings, motions or orders.
- c. Receive opening statements from the parties.
- d. Receive evidence, in accordance with Iowa Code section 17A.14, on behalf of the state of Iowa and on behalf of the licensee.
- e. Question the witnesses.
- f. Receive closing statements from the parties.
- g. Determine the findings of fact by a majority vote and make a written report of its findings to the board within a reasonable period.

811—10.9(17A,169,272C) Informal settlement. Pursuant to the provisions of Iowa Code sections 17A.12 and 272C.3, the board may consider resolution of disciplinary matters through informal settlement prior to commencement of contested case proceedings. The executive secretary or a designee may negotiate with the licensee regarding a proposed disposition of the controversy. Upon consent of both parties, the board will review the proposal for action.

811—10.10(17A,169,272C) Voluntary surrender. A voluntary surrender of licensure may be submitted to the board as resolution of a contested case or in lieu of continued compliance with a disciplinary decision of the board.

811—10.11(17A,169,272C) Application for reinstatement. Any person whose license to practice veterinary medicine has been suspended, revoked, or voluntarily surrendered may apply to the board for reinstatement in accordance with the terms and conditions of the order.

10.11(1) If the license was voluntarily surrendered, or if the order for suspension or revocation did not establish terms and conditions for reinstatement, an initial application may not be made until one year has elapsed from the date of the order.

10.11(2) The application shall allege facts and circumstances which will enable the board to determine that the basis for the sanction or voluntary surrender no longer exists, and that it is in the public interest to reinstate the license. The burden of proof to establish these facts shall rest with the petitioner.

10.11(3) The hearing in an application for reinstatement is a contested case in the meaning of Iowa Code section 17A.12.

10.11(4) The order to grant or deny reinstatement shall incorporate findings of fact and conclusions of law. If reinstatement is granted, terms and conditions of licensure may be imposed.

811—10.12 Reserved.

811—10.13(17A,169,272C) Contested case proceedings. The following rules apply to board activities which are initiated upon determination of probable cause and result in the issuance of a notice of hearing.

811—10.14(17A) Definitions. Except where otherwise specifically defined by law:

“*Contested case*” means a proceeding defined by Iowa Code section 17A.2(5) and includes any matter defined as a no factual dispute contested case under 1998 Iowa Acts, chapter 1202, section 14.

“*Issuance*” means the date of mailing of a decision or order or date of delivery if service is by other means, unless another date is specified in the order.

“*Party*” means each person or agency named or admitted as a party or properly seeking and entitled as of right to be admitted as a party.

“*Presiding officer*” means the chairperson of the board or designee.

“*Proposed decision*” means the presiding officer’s recommended findings of fact, conclusions of law, decision, and order in a contested case in which the board did not preside.

811—10.15(17A) Time requirements.

10.15(1) Time shall be computed as provided in Iowa Code subsection 4.1(34).

10.15(2) For good cause, the presiding officer may extend or shorten the time to take any action, except as precluded by statute. Except for good cause stated in the record, before extending or shortening the time to take any action, the presiding officer shall afford all parties an opportunity to be heard or to file written arguments.

811—10.16(17A) Notice of hearing. The board shall issue an order, notice of hearing, and statement of charges following its determination of probable cause pursuant to Iowa Code section 17A.12(2). Delivery of the notice of hearing constitutes the commencement of the contested case proceeding.

10.16(1) The date, time, and location of the hearing shall be set by the chairperson or the executive secretary. The licensee shall be notified at least 30 days prior to the scheduled hearing.

10.16(2) Notification shall be in writing delivered either by personal service as in civil actions or by certified mail with return receipt requested. When the licensee cannot be located:

a. An affidavit shall be prepared outlining the measures taken to attempt service, and shall become a part of the file when a notice cannot be delivered by personal service or certified mail, return receipt requested.

b. Notice of hearing shall be published once each week for three consecutive weeks in a newspaper of general circulation, published or circulated in the county of last-known residence of the licensee. The newspaper will be selected by the executive secretary or a designee. The first notice of hearing shall be published at least 30 days prior to the scheduled hearing.

811—10.17(17A) Presiding officer. Disciplinary hearings shall be conducted by the board pursuant to Iowa Code section 272C.6. The chairperson of the board shall designate the presiding officer in accordance with the provisions of 1998 Iowa Acts, chapter 1202, section 15.

10.17(1) For nondisciplinary proceedings, any party who wishes to request that the presiding officer assigned to render a proposed decision be an administrative law judge employed by the department of inspections and appeals must file a written request within 20 days after service of a notice of hearing.

10.17(2) The executive secretary may deny the request upon a finding that one or more of the following apply:

a. Neither the agency nor any officer of the agency under whose authority the contested case is to take place is a named party to the proceeding or a real party in interest to that proceeding.

b. There is a compelling need to expedite issuance of a final decision in order to protect the public health, safety, or welfare.

c. The case involves significant policy issues of first impression that are inextricably intertwined with the factual issues presented.

d. The demeanor of the witness is likely to be dispositive in resolving the disputed factual issues.

e. Funds are unavailable to pay the costs of an administrative law judge and an interagency appeal.

f. The request was not timely filed.

g. The request is not consistent with a specified statute.

h. The request would not conform to the disciplinary hearing provision of Iowa Code section 272C.6.

10.17(3) The agency (or its designee) shall issue a written ruling specifying the grounds for its decision within 20 days after a request for an administrative law judge is filed.

10.17(4) All rulings by an administrative law judge are subject to appeal to the agency. A party must seek any available intra-agency appeal in order to exhaust adequate administrative remedies.

10.17(5) Unless otherwise provided by law, the board, when reviewing a proposed decision upon intra-agency appeal, shall have the powers of and shall comply with the provisions of this chapter which apply to presiding officers.

811—10.18(17A) Waiver of procedures. Unless otherwise precluded by law, the parties in a contested case proceeding may waive any provision of this chapter. However, the agency in its discretion may refuse to give effect to such a waiver when it deems the waiver to be inconsistent with the public interest.

811—10.19(17A) Telephone proceedings. The presiding officer may resolve preliminary procedural motions by telephone conference in which all parties have an opportunity to participate. Other telephone proceedings may be held with the consent of all parties. The presiding officer will determine the location of the parties and witnesses for telephone hearings. The convenience of the witnesses or parties, as well as the nature of the case, will be considered when location is chosen.

811—10.20(17A) Disqualification.

10.20(1) A presiding officer or other person shall withdraw from participation in the making of any proposed or final decision in a contested case if that person:

- a.* Has a personal bias or prejudice concerning a party or a representative of a party;
- b.* Has personally investigated, prosecuted or advocated in connection with that case, the specific controversy underlying that case, another pending factually related contested case, or a pending factually related controversy that may culminate in a contested case involving the same parties;
- c.* Is subject to the authority, direction or discretion of any person who has personally investigated, prosecuted or advocated in connection with that contested case, the specific controversy underlying that contested case, or a pending factually related contested case or controversy involving the same parties;
- d.* Has acted as counsel to any person who is a private party to that proceeding within the past two years;
- e.* Has a personal financial interest in the outcome of the case or any other significant personal interest that could be substantially affected by the outcome of the case;
- f.* Has a spouse or relative within the third degree of relationship that: (1) is a party to the case, or an officer, secretary or trustee of a party; (2) is a lawyer in the case; (3) is known to have an interest that could be substantially affected by the outcome of the case; or (4) is likely to be a material witness in the case; or
- g.* Has any other legally sufficient cause to withdraw from participation in the decision making in that case.

10.20(2) The term “personally investigated” means taking affirmative steps to interview witnesses directly or to obtain documents or other information directly. The term “personally investigated” does not include general direction and supervision of assigned investigators, unsolicited receipt of information which is relayed to assigned investigators, review of another person’s investigative work product in the course of determining whether there is probable cause to initiate a proceeding or exposure to factual information while performing other agency functions, including fact gathering for purposes other than investigation or the matter which culminates in a contested case. Factual information relevant to the merits of a contested case received by a person who later serves as presiding officer in that case shall be disclosed if required by 1998 Iowa Acts, chapter 1202, section 19(3), and subrules 10.20(3) and 10.32(9).

10.20(3) In a situation where a presiding officer or other person knows of information which might reasonably be deemed to be a basis for disqualification and decides voluntary withdrawal is unnecessary,

that person shall submit the relevant information for the record by affidavit and shall provide for the record a statement of the reasons for the determination that withdrawal is unnecessary.

10.20(4) If a party asserts disqualification on any appropriate ground, including those listed in subrule 10.20(1), the party shall file a motion supported by an affidavit pursuant to 1998 Iowa Acts, chapter 1202, section 19(7). The motion must be filed as soon as practicable after the reason alleged in the motion becomes known to the party. If, during the course of the hearing, a party first becomes aware of evidence of bias or other grounds for disqualification, the party may move for disqualification but must establish the grounds by the introduction of evidence into the record.

If the presiding officer determines that disqualification is appropriate, the presiding officer or other person shall withdraw. If the presiding officer determines that withdrawal is not required, the presiding officer shall enter an order to that effect. A party asserting disqualification may seek an interlocutory appeal under rule 10.34(17A).

811—10.21(17A) Consolidation—severance.

10.21(1) *Consolidation.* The presiding officer may consolidate any or all matters at issue in two or more contested case proceedings where: (a) the matters at issue involve common parties or common questions of fact or law; (b) consolidation would expedite and simplify consideration of the issues involved; and (c) consolidation would not adversely affect the rights of any of the parties to those proceedings.

10.21(2) *Severance.* The presiding officer may, for good cause shown, order any contested case proceedings or portions thereof severed.

811—10.22(17A) Pleadings.

10.22(1) Pleadings may be required by rule, by notice of hearing, or by order of the presiding officer.

10.22(2) Petition.

a. Any petition required in a contested case proceeding shall be filed within 20 days of delivery or the notice of hearing or subsequent order of the presiding officer, unless otherwise ordered.

b. A petition shall state in separately numbered paragraphs the following:

- (1) The persons or entities on whose behalf the petition is filed;
- (2) The particular provision of statutes and rules involved;
- (3) The relief demanded and the facts and laws relied upon for such relief; and
- (4) The name, address and telephone number of the petitioner and the petitioner's attorney.

10.22(3) Answer. An answer may be filed within 20 days of service of the petition. A party may move to dismiss or apply for a more definite and detailed statement when appropriate.

An answer shall show on whose behalf it is filed and specifically admit, deny, or otherwise answer all material allegations of the pleading to which it responds. It shall state any facts deemed to show an affirmative defense and contain as many additional defenses as the pleader may claim.

An answer shall state the name, address and telephone number of the person filing the answer, the person or entity on whose behalf it is filed, and the attorney representing that person.

Any allegation in the petition not denied in the answer is considered admitted. The presiding officer may refuse to consider any defense not raised in the answer which could have been raised on the basis of facts known when the answer was filed if any party would be prejudiced.

811—10.23(17A) Service and filing of pleadings and other papers.

10.23(1) *When service required.* Except where otherwise provided by law, every pleading, motion, document, or other paper filed in a contested case proceeding and every paper relating to discovery in such a proceeding shall be served upon each of the parties of record to the proceeding, including the person designated as advocate or prosecutor for the state or the agency. Except for the original notice of hearing and an application for rehearing as provided in Iowa Code section 17A.16(2), the party filing a document is responsible for service on all parties.

10.23(2) *Service—how made.* Service upon a party represented by an attorney shall be made upon the attorney unless otherwise ordered. Service is made by delivery or by mailing a copy to the person's

last-known address. Service by mail is complete upon mailing, except where otherwise specifically provided by statute, rule, or order.

10.23(3) Filing—when required. After the notice of hearing, all pleadings, motions, documents or other papers in a contested case proceeding shall be filed with the board.

10.23(4) Filing—when made. Except where otherwise provided by law, a document is deemed filed at the time it is delivered to the board office, delivered to an established courier service for immediate delivery to that office, or mailed by first-class mail or state interoffice mail to that office, so long as there is proof of mailing.

10.23(5) Proof of mailing. Proof of mailing includes either: a legible United States Postal Service postmark on the envelope, a certificate of service, a notarized affidavit, or a certification in substantially the following form:

I certify under penalty of perjury and pursuant to the laws of Iowa that, on (date of mailing), I mailed copies of (describe document) addressed to the (agency office and address) and to the names and addresses of the parties listed below by depositing the same in the United States mail or state interoffice mail.

(Date)

(Signature)

811—10.24(17A) Discovery.

10.24(1) Discovery procedures applicable in civil actions are applicable in contested cases. Unless lengthened or shortened by these rules or by order of the presiding officer, time periods for compliance with discovery shall be as provided in the Iowa Rules of Civil Procedure.

10.24(2) Any motion relating to discovery shall allege that the moving party has previously made a good-faith attempt to resolve the discovery issues involved with the opposing party. Motions in regard to discovery shall be ruled upon by the presiding officer. Opposing parties shall be afforded the opportunity to respond within ten days of the filing of the motion unless the time is shortened as provided in subrule 10.24(1). The presiding officer may rule on the basis of the written motion and any response, or may order argument on the motion.

10.24(3) Evidence obtained in discovery may be used in the contested case proceeding if that evidence would otherwise be admissible in that proceeding.

811—10.25(17A) Subpoenas.

10.25(1) Issuance.

a. An agency subpoena shall be issued to a party on request. Such a request must be in writing. In the absence of good cause for permitting later action, a request for a subpoena must be received at least three days before the scheduled hearing. The request shall include the name, address, and telephone number of the requesting party.

b. Except to the extent otherwise provided by law, parties are responsible for service of their own subpoenas and payment of witness fees and mileage expenses.

10.25(2) Motion to quash or modify. The presiding officer may quash or modify a subpoena for any lawful reason upon motion in accordance with the Iowa Rules of Civil Procedure. A motion to quash or modify a subpoena shall be set for argument promptly.

811—10.26(17A) Motions.

10.26(1) No technical form for motions is required. However, prehearing motions must be in writing, state the grounds for relief, and state the relief sought.

10.26(2) Any party may file a written response to a motion within ten days after the motion is served, unless the time period is extended or shortened by rules of the agency or the presiding officer. The presiding officer may consider a failure to respond within the required time period in ruling on a motion.

10.26(3) The presiding officer may schedule oral argument on any motion.

10.26(4) Motions pertaining to the hearing must be filed and served at least ten days prior to the date of hearing unless there is good cause for permitting later action or the time for such action is lengthened or shortened by rule of the agency or an order of the presiding officer.

811—10.27(17A) Prehearing conference.

10.27(1) Any party may request a prehearing conference. A written request for prehearing conference or an order for prehearing conference on the presiding officer's own motion shall be filed not less than seven days prior to the hearing date. A prehearing conference shall be scheduled not less than three business days prior to the hearing date.

Written notice of the prehearing conference shall be given by the board office to all parties. For good cause the presiding officer may permit variances from this rule.

10.27(2) Each party shall bring to the prehearing conference:

a. A final list of witnesses the party anticipates will testify at hearing. Witnesses not listed may be excluded from testifying unless there was good cause for the failure to include their names; and

b. A final list of exhibits which the party anticipates will be introduced at hearing. Exhibits other than rebuttal exhibits that are not listed may be excluded from admission into evidence unless there was good cause for the failure to include them.

c. Witness or exhibit lists may be amended subsequent to the prehearing conference within the time limits established by the presiding officer at the prehearing conference. Any such amendments must be served on all parties.

10.27(3) In addition to the requirements of subrule 10.27(2), the parties at a prehearing conference may:

a. Enter into stipulations of law or fact;

b. Enter into stipulations on the admissibility of exhibits;

c. Identify matters which the parties intend to request be officially noticed;

d. Enter into stipulations for waiver of any provision of law; and

e. Consider any additional matters which will expedite the hearing.

10.27(4) Prehearing conferences shall be conducted by telephone unless otherwise ordered. Parties shall exchange and receive witness and exhibit lists in advance of a telephone prehearing conference.

811—10.28(17A) Continuances. The executive secretary shall have the authority to grant a continuance after consultation, if needed, with the chairperson of the board.

A request for continuance of a contested case matter must be submitted in writing to the board not later than seven days prior to the scheduled date of the hearing. Exceptions shall be granted at the discretion of the executive secretary only in situations involving extenuating, extraordinary, or emergency circumstances.

811—10.29(17A) Hearing procedures.

10.29(1) The presiding officer presides at the hearing, and may rule on motions, require briefs, issue a decision, and issue such orders and rulings as will ensure the orderly conduct of the proceedings.

10.29(2) All objections shall be timely made and stated on the record.

10.29(3) Parties have the right to participate or be represented in all hearings or prehearing conferences related to their case. Any party may be represented by an attorney or another person authorized by law.

10.29(4) Subject to terms and conditions prescribed by the presiding officer, parties have the right to introduce evidence on issues of material fact, cross-examine witnesses present at the hearing as necessary for a full and true disclosure of the facts, present evidence in rebuttal, and submit briefs and engage in oral argument.

10.29(5) The presiding officer shall maintain the decorum of the hearing and may refuse to admit or may expel anyone whose conduct is disorderly.

10.29(6) Witnesses may be sequestered during the hearing.

10.29(7) The presiding officer shall conduct the hearing in the following manner:

- a. The presiding officer shall give an opening statement briefly describing the nature of the proceedings;
- b. The parties shall be given an opportunity to present opening statements;
- c. Parties shall present their cases in the sequence determined by the presiding officer;
- d. Each witness shall be sworn or affirmed by the presiding officer or the court reporter, and be subject to examination and cross-examination. The presiding officer may limit questioning in a manner consistent with law;
- e. When all parties and witnesses have been heard, parties may be given the opportunity to present final arguments.

811—10.30(17A) Evidence.

10.30(1) The presiding officer shall rule on admissibility of evidence and may, where appropriate, take official notice of facts in accordance with all applicable requirements of law.

10.30(2) Stipulation of facts is encouraged. The presiding officer may make a decision based on stipulated facts.

10.30(3) Evidence in the proceeding shall be confined to those issues to which the parties received notice prior to the hearing, unless the parties waive their right to such notice or the presiding officer determines that good cause justifies expansion of the issues. If the presiding officer decides to admit evidence on issues outside the scope of the notice over the objection of a party who did not have actual notice of those issues, that party, upon timely request, shall receive a continuance sufficient to amend pleadings and to prepare on the additional issue.

10.30(4) The party seeking admission of an exhibit must provide opposing parties with an opportunity to examine the exhibit prior to the ruling on its admissibility. Copies of documents should normally be provided to opposing parties.

10.30(5) Any party may object to specific evidence or may request limits on scope of any examination or cross-examination. Such an objection shall be accompanied by a brief statement of the grounds upon which it is based. The objection, the ruling on the objection, and the reasons for the ruling shall be noted in the record. The presiding officer may rule on the objection at the time it is made or may reserve a ruling until the written decision.

10.30(6) Whenever evidence is ruled inadmissible, the party offering that evidence may submit an offer of proof on the record. The party making the offer of proof for excluded oral testimony shall briefly summarize the testimony or, with permission of the presiding officer, present the testimony. If the excluded evidence consists of a document or exhibit, it shall be marked as part of an order of proof and inserted in the record.

811—10.31(17A) Default.

10.31(1) If a party fails to appear or participate in a contested case proceeding after proper service of notice, the presiding officer may, if no adjournment is granted, enter a default decision or proceed with the hearing and render a decision in the absence of the party.

10.31(2) Where appropriate and not contrary to law, any party may move for default against a party who has requested the contested case proceeding and has failed to file a required pleading or has failed to appear after proper service.

10.31(3) Default decisions or decisions rendered on the merits after a party has failed to appear or participate in a contested case proceeding become final agency action unless, within 15 days after the date of notification or mailing of the decision, a motion to vacate is filed and served on all parties or an appeal of a decision on the merits is timely initiated within the time provided by rule 10.36(17A). A motion to vacate must state all facts relied upon by the moving party which establish that good cause existed for that party's failure to appear or participate at the contested case proceeding. Each fact so stated must be substantiated by at least one sworn affidavit of a person with personal knowledge of each such fact attached to the motion.

10.31(4) The time for further appeal of a decision for which a timely motion to vacate has been filed is stayed pending a decision on the motion to vacate.

10.31(5) Properly substantiated and timely filed motions to vacate shall be granted only for good cause shown. The burden of proof as to good cause is on the moving party. Adverse parties shall have ten days to respond to a motion to vacate. Adverse parties shall be allowed to conduct discovery as to the issue of good cause and to present evidence on the issue prior to a decision on the motion, if a request to do so is included in that party's response.

10.31(6) "Good cause" for purposes of this rule shall have the same meaning as "good cause" for setting aside a default judgment under Iowa Rule of Civil Procedure 236.

10.31(7) A decision denying a motion to vacate is subject to further appeal within the time limit allowed for further appeal of a decision on the merits in the contested case proceeding. A decision granting a motion to vacate is subject to interlocutory appeal by the adverse party pursuant to rule 10.34(17A).

811—10.32(17A) Ex parte communication.

10.32(1) Prohibited communications. Unless required for the disposition of ex parte matters specifically authorized by statute, following issuance of the notice of hearing, there shall be no communication, directly or indirectly, between the presiding officer and any party or representative of any party or any other person with a direct or indirect interest in such case in connection with any issue of fact or law in the case, except upon notice and opportunity for all parties to participate. This does not prohibit persons jointly assigned such tasks from communicating with each other. Nothing in this provision is intended to preclude the presiding officer from communicating with members of the agency or seeking the advice or help of persons other than those with a personal interest in, or those engaged in personally investigating as defined in subrule 10.20(2), prosecuting, or advocating in, either the case under consideration or a pending factually related case involving the same parties, as long as those persons do not directly or indirectly communicate to the presiding officer any ex parte communications they have received of a type that the presiding officer would be prohibited from receiving or that furnish, augment, diminish, or modify the evidence in the record.

10.32(2) Prohibitions on ex parte communications commence with the issuance of the notice of hearing in a contested case and continue for as long as the case is pending.

10.32(3) Written, oral or other forms of communication are "ex parte" if made without notice and opportunity for all parties to participate.

10.32(4) To avoid prohibited ex parte communications notice must be given in a manner reasonably calculated to give all parties a fair opportunity to participate. Notice of written communications shall be provided in compliance with rule 10.23(17A) and may be supplemented by telephone, facsimile, E-mail or other means of notification. Where permitted, oral communications may be initiated through telephone conference call, which includes all parties or their representatives.

10.32(5) Persons who jointly act as presiding officer in a pending contested case may communicate with each other without notice or opportunity for parties to participate.

10.32(6) The executive secretary or other persons may be present in deliberations or otherwise advise the presiding officer without notice or opportunity for parties to participate as long as they are not disqualified from participating in the making of a proposed or final decision under subrule 10.20(1) or other law and they comply with subrule 10.32(1).

10.32(7) Communications with the presiding officer involving scheduling or uncontested procedural matters do not require notice or opportunity for parties to participate. A party should notify other parties prior to initiating such contact with the presiding officer when feasible, and shall notify other parties when seeking to continue hearings or other deadlines pursuant to rule 10.29(17A).

10.32(8) Disclosure of prohibited communications. A presiding officer who received a prohibited ex parte communication during the pendency of a contested case must initially determine if the effect of the communication is so prejudicial that the presiding officer should be disqualified. If the presiding officer determines that disqualification is warranted, a copy of any prohibited written communication, all written responses to the communication, a written summary stating the substance of any prohibited oral or other communication not available in written form for disclosure, all responses made, and the identity of each person from whom the presiding officer received a prohibited ex parte communication shall be

submitted for inclusion in the record under seal by protective order. If the presiding officer determines that disqualification is not warranted, such documents shall be submitted for inclusion in the record and served on all parties. Any party desiring to rebut the prohibited communication must be allowed the opportunity to do so upon written request filed within ten days after notice of the communication.

10.32(9) Promptly after being assigned to serve as presiding officer on a hearing panel, as a member of a full board hearing, on an intra-agency appeal, or other basis, a presiding officer shall disclose to all parties material factual information received through ex parte communication prior to such assignment, unless the factual information has already been or shortly will be disclosed pursuant to Iowa Code section 17A.13(2) or through discovery. Factual information contained in an investigative report or similar document need not be separately disclosed by the presiding officer as long as such documents have been or will shortly be provided to the parties.

10.32(10) The presiding officer may render a proposed or final decision imposing appropriate sanctions for violations of this rule including default, a decision against the offending party, censure, or suspension or revocation of the privilege to practice before the agency. Violation of ex parte communication prohibitions by agency personnel shall be reported to the board's executive secretary for possible sanctions including: censure, suspension, dismissal, or other disciplinary action.

811—10.33(17A) Recording costs. Upon request, the board shall provide a copy of the whole or any portion of the record at cost. The cost of preparing a copy of the record or of transcribing the hearing record shall be paid by the requesting party.

Parties who request that a hearing be recorded by certified shorthand reporters rather than by electronic means shall bear the cost of such recording, unless otherwise provided by law.

811—10.34(17A) Final decision. When the board presides over reception of the evidence at the hearing, its decision is a final decision.

10.34(1) When a panel of specialists presides over the reception of evidence at the hearing, the findings of fact shall be considered by the board at the earliest feasible time. The decision of the board is a final decision.

10.34(2) A final decision in a contested case proceeding shall be in writing and include findings of fact and conclusions of law, separately stated.

a. Findings of fact shall be accompanied by a concise and explicit statement of underlying facts supporting the findings.

b. The decision shall include an explanation of why the relevant evidence in the record supports each material finding of fact.

c. Conclusions of law shall be supported by cited authority or by a reasoned opinion.

10.34(3) The decision or order shall be promptly delivered to the parties in the manner provided by Iowa Code section 17A.12.

10.34(4) The final decision is a public record pursuant to Iowa Code section 272C.6(4).

811—10.35(17A) Appeals.

10.35(1) Appeal by party. Any adversely affected party may appeal a final decision of the board to the district court within 30 days after issuance, in accordance with Iowa Code section 17A.19 as amended by 1998 Iowa Acts, chapter 1202.

10.35(2) Review. The board may initiate review of the decision or order on its own motion at any time within 30 days following the issuance of such a decision.

10.35(3) Notice of appeal. An appeal of a decision or order is initiated by filing a timely notice of appeal with the board. The notice of appeal must be signed by the appealing party or a representative of that party and contain a certificate of service. The notice shall specify:

a. The parties initiating the appeal;

b. The proposed decision or order appealed from;

c. The specific findings or conclusions to which exception is taken and any other exceptions to the decision or order;

- d. The relief sought;
- e. The grounds for relief.

10.35(4) Requests to present additional evidence. A party may request the taking of additional evidence only by establishing that the evidence is material, that good cause existed for the failure to present the evidence at the hearing, and that the party has not waived the right to present the evidence. A written request to present additional evidence must be filed with the notice of appeal or, by a nonappealing party, within 15 days of service of the notice of appeal. The board may remand a case to the presiding officer for further hearing or may itself preside at the taking of additional evidence.

10.35(5) Scheduling. The board of veterinary medicine shall issue a schedule for consideration of the appeal.

10.35(6) Briefs and arguments. Unless otherwise ordered, within 20 days of the notice of appeal or order for review, each appealing party may file exceptions and briefs. Within 20 days thereafter, any party may file a responsive brief. Briefs shall cite any applicable legal authority and specify relevant portions of the record in that proceeding. Written requests to present an oral argument shall be filed with the briefs.

The board may resolve the appeal on the briefs or provide an opportunity for oral argument. The board may shorten or extend the briefing period as appropriate.

811—10.36(17A) Applications for rehearing.

10.36(1) By whom filed. Any party to a contested case proceeding may file an application for rehearing from a final order.

10.36(2) Content of application. The application for rehearing shall state on whose behalf it is filed, the specific grounds for rehearing, and the relief sought. In addition, the application shall state whether the applicant desires reconsideration of all or part of the agency decision on the existing record and whether, on the basis of the grounds enumerated in subrule 10.36(4), the applicant requests an opportunity to submit additional evidence.

10.36(3) Time of filing. The application shall be filed with the board office within 20 days after issuance of the final decision.

10.36(4) Notice to other parties. A copy of the application shall be timely mailed by the applicant to all parties of record not joining therein. If the application does not contain a certificate of service, the board shall serve copies on all parties.

10.36(5) Disposition. Any application for a rehearing shall be deemed denied unless the agency grants the application within 20 days after its filing.

811—10.37(17A) No factual dispute contested cases. If the parties agree that no dispute of material fact exists as to a matter that would be a contested case if such a dispute of fact existed, the parties may present all relevant admissible evidence either by stipulation or otherwise as agreed by the parties, without necessity for the production of evidence at an evidentiary hearing. If such agreement is reached, a jointly submitted schedule detailing the method and timetable for submission of the record, briefs and oral argument should be submitted to the presiding officer for approval as soon as practicable.

811—10.38(17A) Emergency adjudicative proceedings.

10.38(1) Necessary emergency action. To the extent necessary to prevent or avoid immediate danger to the public health, safety, or welfare, the agency may issue a written order in compliance with Iowa Code section 17A.18 to suspend a license in whole or in part, order the cessation of any continuing activity, order affirmative action, or take other action within the jurisdiction of the agency by emergency adjudicative order. Before issuing an emergency adjudicative order the agency shall consider factors including, but not limited to, the following:

a. Whether there has been a sufficient factual investigation to ensure that the agency is proceeding on the basis of reliable information;

b. Whether the specific circumstances which pose immediate danger to the public health, safety or welfare have been identified and determined to be continuing;

- c.* Whether the person required to comply with the emergency adjudicative order may continue to engage in other activities without posing immediate danger to the public health, safety or welfare;
- d.* Whether imposition of monitoring requirements or other interim safeguards would be sufficient to protect the public health, safety or welfare; and
- e.* Whether the specific action contemplated by the agency is necessary to avoid the immediate danger.

10.38(2) Issuance. The written emergency adjudicative order shall be immediately delivered to persons who are required to comply with the order by utilizing one or more of the following procedures:

- a.* Personal delivery;
- b.* Certified mail, return receipt requested, to the last address on file with the agency;
- c.* Certified mail to the last address on file with the agency;
- d.* First-class mail to the last address on file with the agency; or
- e.* Fax. Fax may be used as the sole method of delivery if the person required to comply with the order has filed a written request that agency orders be sent by fax and has provided a fax number for that purpose.

To the degree practicable, the agency shall select the procedure for providing written notice that best ensures prompt, reliable delivery.

10.38(3) Oral notice. Unless the written emergency adjudicative order is provided by personal delivery on the same day that the order issues, the agency shall make reasonable immediate efforts to contact by telephone the persons who are required to comply with the order.

10.38(4) Completion of proceedings. Issuance of a written emergency adjudicative order shall include notification of the date on which agency proceedings are scheduled for completion. After issuance of an emergency adjudicative order, continuance of further agency proceedings to a later date will be granted only in compelling circumstances upon application in writing.

These rules are intended to implement Iowa Code chapter 17A as amended by 1998 Iowa Acts, chapter 1202, and Iowa Code chapters 169 and 272C.

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CHAPTER 11
CONTINUING EDUCATION
[Prior to 2/8/89, Veterinary Medicine, Board of(842) Ch 8]

811—11.1(169) Continuing education required.

11.1(1) At least 60 hours of continuing education in courses approved by the board of veterinary medicine shall be completed triennially by each licensee as a condition for license renewal. The licensee has responsibility for financing of continuing education. These credit hours may be obtained by attending board-approved scientific seminars and meetings on the basis of one credit hour for each hour of attendance. Attendance at any approved national, state or regional meeting will be acceptable. One hour of credit may be approved for local meetings where a scientific paper is presented. Credit for qualified graduate college courses may be approved on the basis of multiplying each college credit hour by 10, to a maximum of 30 hours during any one triennial license period. A maximum of 20 hours during any one triennial license period of continuing education may be achieved by completion of approved home study courses.

11.1(2) Each licensee shall obtain the 60 credit hours between July 1 of the year the license was issued and June 30 of the following third year as a condition precedent to license renewal. Continuing education credits in excess of 60 hours for any three-year license period may be carried over to the next license period, but the total number of credits carried over shall not exceed 20 hours.

11.1(3) A recent graduate is exempt from meeting continuing education requirements at the time of original licensure and for the first year of practice. For the purpose of this rule, a “recent graduate” means a person who has graduated from an accredited or approved school of veterinary medicine, or received a certificate from the Educational Commission for Foreign Veterinary Graduates (ECFVG) no more than three years prior to passing the state board examination. If a recent graduate is licensed during the first year of the triennial continuing education period, the licensee is required to complete 40 hours of continuing education for the first license renewal. If a recent graduate is licensed during the second year of the triennial continuing education period, the licensee is required to complete 20 hours of continuing education for the first license renewal. If a recent graduate is licensed during the third year of the continuing education period, the licensee is exempt from meeting continuing education requirements for the first license renewal.

11.1(4) Completion of the continuing education will be reported to the secretary of the board of veterinary medicine on forms provided by the board, at the time the license is due for renewal. The reporting form must be signed by the license holder and accompanied by a renewal application and the proper renewal fee.

This rule is intended to implement Iowa Code sections 169.5, 169.12 and 272C.2.

811—11.2(169) Exemptions for inactive practitioners. A licensee who is not engaged in practice in the state of Iowa residing within or without the state of Iowa may be granted a waiver of compliance and obtain a certificate of exemption upon paying the annual license renewal fees. The licensee shall make written application to the board containing a statement that the applicant will not engage in the practice of veterinary medicine in Iowa without first complying with all the regulations governing reinstatement after exemption. The application for a certificate of exemption shall be submitted upon the form provided by the board.

811—11.3(169) Reinstatement. Practitioners whose license has lapsed or who have been inactive shall, prior to engaging in the practice of veterinary medicine in the state of Iowa, satisfy the following requirements for reinstatement:

11.3(1) Successfully complete the examination procedures specified in rule 811—7.1(169) within one year of reinstatement or otherwise demonstrate their proficiency to the satisfaction of the board;

11.3(2) Submit written application for reinstatement to the board upon forms provided by the board;
and

11.3(3) Furnish evidence of completion of a total number of hours of accredited continuing education computed by multiplying 20 by the number of years of inactive status, or 60 hours of accredited continuing education, whichever is less.

These rules are intended to implement Iowa Code sections 169.5, 169.12, and 272C.2.

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CHAPTER 12
STANDARDS OF PRACTICE
[Prior to 2/8/89, Veterinary Medicine, Board of[842] Ch 9]

811—12.1(169) Prescription drugs and restricted immunization products. A drug or immunization product intended for veterinary use where state or federal law restricts this drug or immunizing product to use by or under the order of a licensed veterinarian, shall only be sold or distributed to, or on the order of, a licensed veterinarian, to be used in the course of the veterinarian's professional practice.

12.1(1) The order for all such drugs or immunizing products shall be accompanied by the veterinarian's original prescription which should show the quantity of the product, the number of times the prescription can be refilled, the veterinarian's name, address and telephone.

12.1(2) A prescription veterinary product shall not be deemed to be used "in the course of the veterinarian's professional practice" unless the veterinarian is supervising the use of the product or a veterinarian/client/patient relationship exists.

12.1(3) The board shall determine, on a case-by-case basis, if a veterinarian/client/patient relationship exists. The board may consider, among other items, the following criteria:

a. The veterinarian has assumed the responsibility for making medical judgments regarding the health of the animal(s) and the need for medical treatment, and the client (owner or other caretaker) has agreed to follow the instructions of the veterinarian; and when

b. There is sufficient knowledge of the animal(s) by the veterinarian to initiate at least a general or preliminary diagnosis of the medical condition of the animal(s). This means that the veterinarian has recently seen and is personally acquainted with the keeping and care of the animal(s) by virtue of an examination of the animal(s); or by medically appropriate and timely visits to the premises where the animal(s) is kept; and when

c. The practicing veterinarian is readily available for follow-up in case of adverse reactions or failure of the regimen of therapy.

811—12.2(169) Extra label use of veterinary drugs and immunization products. Any extra label use of veterinary products shall be considered, prescribed or used by a practicing veterinarian only; and shall be subject to the following criteria:

12.2(1) There shall be a veterinarian/client/patient relationship as defined in subrule 12.1(3).

12.2(2) There are no marketed products specifically labeled for the conditions diagnosed; or if the labeled dosage is inadequate for the condition, in the opinion of the veterinarian.

12.2(3) The health of the treated animal(s) is immediately threatened and suffering or death would result from a failure to treat the affected animal(s).

These rules are intended to implement Iowa Code section 169.13(7).

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CHAPTER 13
CHILD SUPPORT COLLECTION PROCEDURES

811—13.1(169,252J) Licensing actions. In addition to other reasons specified by statute or rule, the board may refuse to issue a license or permit, or may revoke, suspend, or not renew any license or permit for which it has jurisdiction if the board is in receipt of a certificate of noncompliance from the child support recovery unit, pursuant to the procedures set forth in Iowa Code Supplement chapter 252J.

An applicant, licensee, or permit holder whose application is denied or whose license or permit is denied, suspended, or revoked because of receipt by the board of a certificate of noncompliance issued by the child support recovery unit shall be subject to the provisions of rule 811—13.1(169,252J), and procedures specified in 811—Chapter 10 for contesting board actions shall not apply.

811—13.2(169,252J) Child support collection procedures. The following procedures shall apply to actions taken by the board on a certificate of noncompliance pursuant to Iowa Code Supplement chapter 252J:

13.2(1) The notice required by Iowa Code Supplement section 252J.8 shall be served upon the applicant, licensee, or permit holder by restricted certified mail, return receipt requested, or personal service in accordance with Rules of Civil Procedure 56.1. Alternatively, the applicant, licensee, or permit holder may accept service personally or through authorized counsel.

13.2(2) The effective date of revocation or suspension of a license or permit or the denial of the issuance or renewal of a license or permit, as specified in the notice required by Iowa Code Supplement section 252J.8, shall be 60 days following service of the notice upon the licensee, permit holder, or applicant.

13.2(3) Applicants, licensees, and permit holders shall keep the board informed of all court actions and all child support recovery unit actions taken under or in connection with Iowa Code Supplement chapter 252J and shall provide the board copies, within seven days of filing or issuance, of all applications filed with the district court pursuant to Iowa Code Supplement section 252J.9, all court orders entered in such actions, and withdrawals of certificates of noncompliance by the child support recovery unit.

13.2(4) All board fees for applications, license renewals or reinstatements must be paid by the applicant, licensee, or permit holder before a license will be issued, renewed or reinstated after the board has denied the issuance or renewal of a license or has suspended or revoked a license or permit pursuant to Iowa Code Supplement chapter 252J.

13.2(5) If an applicant, licensee, or permit holder timely files a district court action following service of a board notice pursuant to Iowa Code Supplement sections 252J.8 and 252J.9, the board shall continue with the intended action described in the notice upon receipt of a court order lifting the stay, dismissing the action, or otherwise directing the board to proceed. For the purpose of determining the effective date of revocation or suspension, or denial of the issuance or renewal of a license or permit, the board shall count the number of days before the action was filed and the number of days after the action was disposed of by the court.

These rules are intended to implement Iowa Code chapter 169 and Iowa Code Supplement chapter 252J.

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CHAPTER 14
WAIVER OR VARIANCE OF RULES

811—14.1(17A,169) Definition. For purposes of this chapter, “a waiver or variance” means action by the board which suspends in whole or in part the requirements or provisions of a rule as applied to an identified person on the basis of the particular circumstances of that person. For simplicity, the term “waiver” shall include both a “waiver” and a “variance.”

811—14.2(17A,169) Scope of chapter. This chapter outlines generally applicable standards and a uniform process for the granting of individual waivers from rules adopted by the board in situations where no other more specifically applicable law provides for waivers. To the extent another more specific provision of law governs the issuance of a waiver from a particular rule, the more specific provision shall supersede this chapter with respect to any waiver from that rule.

811—14.3(17A,169) Applicability. The board may grant a waiver from a rule only if the board has jurisdiction over the rule and the requested waiver is consistent with applicable statutes, constitutional provisions, or other provisions of law. The board may not waive requirements created or duties imposed by statute.

811—14.4(17A,169) Criteria for waiver or variance. In response to a petition completed pursuant to rule 811—14.6(17A,169), the board may in its sole discretion issue an order waiving in whole or in part the requirements of a rule if the board finds, based on clear and convincing evidence, all of the following:

1. The application of the rule would impose an undue hardship on the person for whom the waiver is requested.
2. The waiver from the requirements of the rule in the specific case would not prejudice the substantial legal rights of any person.
3. The provisions of the rule subject to the petition for a waiver are not specifically mandated by statute or another provision of law.
4. Substantially equal protection of public health, safety, and welfare will be afforded by a means other than that prescribed in the particular rule for which the waiver is requested.

811—14.5(17A,169) Filing of petition. A petition for a waiver must be submitted in writing to the board as follows:

14.5(1) License application. If the petition relates to a license application, the petition shall be made in accordance with the filing requirements for the license in question.

14.5(2) Contested cases. If the petition relates to a pending contested case, the petition shall be filed in the contested case proceeding, using the caption of the contested case.

14.5(3) Other. If the petition does not relate to a license application or a pending contested case, the petition may be submitted to the board’s executive secretary.

811—14.6(17A,169) Content of petition. A petition for waiver shall include the following information where applicable and known to the requester:

1. The name, address, and telephone number of the entity or person for whom a waiver is being requested and the case number of any related contested case.
2. A description and citation of the specific rule from which a waiver is requested.
3. The specific waiver requested, including the precise scope and duration.
4. The relevant facts that the petitioner believes would justify a waiver under each of the four criteria described in rule 811—14.4(17A,169). This statement shall include a signed statement from the petitioner attesting to the accuracy of the facts provided in the petition and a statement of reasons that the petitioner believes will justify a waiver.
5. A history of any prior contacts between the board and the petitioner relating to the regulated activity or license affected by the proposed waiver, including a description of each affected license held

by the requester, any notices of violation, contested case hearings, or investigative reports relating to the regulated activity or license within the last five years.

6. Any information known to the requester regarding the board's treatment of similar cases.

7. The name, address, and telephone number of any public agency or political subdivision which also regulates the activity in question or which might be affected by the granting of a waiver.

8. The name, address, and telephone number of any person or entity that would be adversely affected by the granting of a petition.

9. The name, address, and telephone number of any person with knowledge of the relevant facts relating to the proposed waiver.

10. Signed releases of information authorizing persons with knowledge regarding the request to furnish the board with information relevant to the waiver.

811—14.7(17A,169) Additional information. Prior to issuing an order granting or denying a waiver, the board may request additional information from the petitioner relative to the petition and surrounding circumstances. If the petition was not filed in a contested case, the board may, on its own motion or at the petitioner's request, schedule a telephonic or in-person meeting between the petitioner and the board's executive secretary, a committee of the board, or a quorum of the board.

811—14.8(17A,169) Notice. The board shall acknowledge a petition upon receipt. The board shall ensure that, within 30 days of the receipt of the petition, notice of the pendency of the petition and a concise summary of its contents have been provided to all persons to whom notice is required by any provision of law. In addition, the board may give notice to other persons. To accomplish this notice provision, the board may require the petitioner to serve the notice on all persons to whom notice is required by any provision of law and provide a written statement to the board attesting that notice has been provided.

811—14.9(17A,169) Hearing procedures. The provisions of Iowa Code sections 17A.10 to 17A.18A regarding contested case hearings shall apply to any petition for a waiver filed within a contested case and shall otherwise apply to agency proceedings for a waiver only when the board so provides by rule or order or is required to do so by statute.

811—14.10(17A,169) Ruling. An order granting or denying a waiver shall be in writing and shall contain a reference to the particular person and rule or portion thereof to which the order pertains, a statement of the relevant facts and reasons upon which the action is based, and a description of the precise scope and duration of the waiver if one is issued.

14.10(1) Board discretion. The final decision on whether the circumstances justify the granting of a waiver shall be made at the sole discretion of the board upon consideration of all relevant factors. Each petition for a waiver shall be evaluated by the board based on the unique, individual circumstances set out in the petition.

14.10(2) Burden of persuasion. The burden of persuasion rests with the petitioner to demonstrate by clear and convincing evidence that the board should exercise its discretion to grant a waiver from a board rule.

14.10(3) Narrowly tailored exception. A waiver, if granted, shall provide the narrowest exception possible to the provisions of a rule.

14.10(4) Administrative deadlines. When the rule from which a waiver is sought establishes administrative deadlines, the board shall balance the special individual circumstances of the petitioner with the overall goal of uniform treatment of all similarly situated persons.

14.10(5) Conditions. The board may place any condition on a waiver that the board finds desirable to protect the public health, safety, and welfare.

14.10(6) Time period of waiver. A waiver shall not be permanent unless the petitioner can show that a temporary waiver would be impracticable. If a temporary waiver is granted, there is no automatic right

to renewal. At the sole discretion of the board, a waiver may be renewed if the board finds that grounds for a waiver continue to exist.

14.10(7) *Time for ruling.* The board shall grant or deny a petition for a waiver as soon as practicable but, in any event, shall do so within 120 days of its receipt unless the petitioner agrees to a later date. However, if a petition is filed in a contested case, the board shall grant or deny the petition no later than the time at which the final decision in that contested case is issued.

14.10(8) *When deemed denied.* Failure of the board to grant or deny a petition within the required time period shall be deemed a denial of that petition by the board. However, the board shall remain responsible for issuing an order denying a waiver.

14.10(9) *Service of order.* Within seven days of its issuance, any order issued under this chapter shall be transmitted to the petitioner or the person to whom the order pertains and to any other person entitled to such notice by any provision of law.

811—14.11(17A,169) Public availability. All orders granting or denying a waiver petition shall be indexed, filed, and available for public inspection as provided in Iowa Code section 17A.3. Petitions for a waiver and orders granting or denying a waiver petition are public records under Iowa Code chapter 22. Some petitions or orders may contain information the board is authorized or required to keep confidential. The board may accordingly redact confidential information from petitions or orders prior to public inspection.

811—14.12(17A,169) Summary reports. Semiannually, the board shall prepare a summary report identifying the rules for which a waiver has been granted or denied, the number of times a waiver was granted or denied for each rule, a citation to the statutory provisions implemented by these rules, and a general summary of the reasons justifying the board's actions on waiver requests. In addition, the report shall identify the duration and the expiration date of any waiver granted. If practicable, the report shall detail the extent to which the granting of a waiver has affected the general applicability of the rule itself. Copies of this report shall be available for public inspection and shall be provided semiannually to the administrative rules coordinator and the administrative rules review committee.

811—14.13(17A,169) Cancellation of a waiver. A waiver issued by the board pursuant to this chapter may be withdrawn, canceled, or modified if, after appropriate notice and hearing, the board issues an order finding any of the following:

1. The petitioner or the person who was the subject of the waiver order withheld or misrepresented material facts relevant to the propriety or desirability of the waiver;
2. The alternative means for ensuring that the public health, safety, and welfare will be adequately protected after issuance of the waiver order have been demonstrated to be insufficient; or
3. The subject of the waiver order has failed to comply with all conditions contained in the order.

811—14.14(17A,169) Violations. Violation of a condition in a waiver order shall be treated as a violation of the particular rule for which the waiver was granted. As a result, the recipient of a waiver under this chapter who violates a condition of the waiver may be subject to the same remedies or penalties as a person who violates the rule at issue.

811—14.15(17A,169) Defense. After the board issues an order granting a waiver, the order is a defense within its terms and the specific facts indicated therein for the person to whom the order pertains in any proceeding in which the rule in question is sought to be invoked.

811—14.16(17A,169) Judicial review. Judicial review of a board's decision to grant or deny a waiver petition may be taken in accordance with Iowa Code chapter 17A.

These rules are intended to implement Iowa Code section 17A.9A and chapter 169.

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